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## THE JOURNAL OF STATE AGENCY RULEMAKING

ATTORNEY GENERAL'S LIBRARY

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VOLUME 21 NUMBER 3

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(Includes adopted rules filed through January 13, 1988)

**MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: NOVEMBER 21, 1988**

See the Register Index for Subsequent Rulemaking Activity.

**NEXT UPDATE: SUPPLEMENT DECEMBER 19, 1988**

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### RULEMAKING IN THIS ISSUE

#### RULE PROPOSALS

Interested persons comment deadline .....	226
<b>AGRICULTURE</b>	
“Jersey Fresh” logo program .....	227(a)
Soil and water conservation projects: cost sharing .....	230(a)
Emergency acquisition of development easements on farmland .....	231(a)
<b>COMMUNITY AFFAIRS</b>	
Relocation assistance and eviction .....	231(b)
Utility load management devices: installation programs .....	233(a)
Council on Affordable Housing: rental unit credit .....	234(a)
<b>EDUCATION</b>	
High school core proficiencies .....	235(a)
Special education .....	239(a)
Private vocational schools and correspondence schools .....	262(a)
<b>ENVIRONMENTAL PROTECTION</b>	
Waterfront development: extension of comment period .....	267(a)
New Sweden and Oyster Creek wildlife management areas .....	267(b)
Taking of blue crabs .....	268(a)
<b>HEALTH</b>	
Applications to convert licensed acute care beds to non-acute categories .....	272(a)
Advanced life support programs: mobile intensive care units and critical care transport units .....	268(a)
<b>HUMAN SERVICES</b>	
Community mental health services .....	273(a)
Personal Attendant Services Program .....	273(b)
<b>CORRECTIONS</b>	
Inspection of outgoing correspondence .....	277(a)
Inspection of outgoing publications .....	277(b)

#### INSURANCE

Automobile coverage: residual market equalization charges .....	278(a)
Auto body repair facilities: licensure rules .....	280(a)

#### LABOR

Employer wage reporting, penalty abatement requests, hearings .....	281(a)
---	--------

#### COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

Solar energy systems: criteria for sales and use tax exemption .....	282(a)
--	--------

#### LAW AND PUBLIC SAFETY

Practice of optometry: public hearing on delegation of duties to ancillary personnel .....	284(a)
--	--------

#### TRANSPORTATION

NJ TRANSIT: availability of public records .....	284(b)
--	--------

#### TREASURY-TAXATION

Transfer inheritance and estate tax .....	285(a)
---	--------

#### HIGHWAY AUTHORITY

Tolls on Garden State Parkway: extension of comment period .....	287(a)
--	--------

#### RULE ADOPTIONS

#### COMMUNITY AFFAIRS

Uniform Construction Code: plumbing subcode .....	288(a)
---	--------

#### EDUCATION

Appeals to State Board .....	288(b)
Bookkeeping and accounting in local districts .....	292(a)

#### ENVIRONMENTAL PROTECTION

Marine transfer of gasoline: vapor recovery program .....	321(a)
Delaware and Raritan Canal: State Park review zone .....	324(a)

(Continued on Next Page)

# INTERESTED PERSONS

**Interested persons** may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **March 8, 1989**. 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.

## RULEMAKING IN THIS ISSUE—Continued

<b>HEALTH</b>		<b>CASINO CONTROL COMMISSION</b>	
Hospital reimbursement: burn care unit reporting .....	295(a)	Inspection of slot machine jackpots .....	314(b)
General acute care hospitals: implementation of proposed schedule of rates .....	296(a)	<b>ATLANTIC COUNTY TRANSPORTATION AUTHORITY</b>	
Hospital reimbursement: DRG outliers .....	296(b)	Rules of operation .....	314(c)
Hospital reimbursement: laundry and linen cost center .....	297(a)		
Hospital facilities: confidentiality of patient information ...	297(b)	<b>PUBLIC NOTICES</b>	
<b>CORRECTIONS</b>		<b>ENVIRONMENTAL PROTECTION</b>	
Infants born to female inmates .....	299(a)	Petition to amend Manchester portion of Pinelands Land Capability Map .....	345(a)
<b>LABOR</b>		<b>HEALTH</b>	
Public employee safety and health: access to exposure and medical records .....	299(b)	Worker and Community Right to Know Act: public hearing concerning implementation .....	345(b)
Public employee safety and health: work in confined spaces .....	299(c)	Life-sustaining medical treatment in long-term care facilities: petition for rulemaking .....	346(a)
<b>COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT</b>		<b>HUMAN SERVICES</b>	
Urban Small Business Incubator Program .....	299(d)	Social Services Block Grant program: Pre-Expenditure Report .....	346(b)
Urban Development Program .....	302(a)	<b>LAW AND PUBLIC SAFETY</b>	
Neighborhood Development Corporation .....	304(a)	Contract carrier applicant .....	346(c)
<b>LAW AND PUBLIC SAFETY</b>		<b>TREASURY-GENERAL</b>	
Board of Dentistry: access to complaint history of licensees .....	338(a)	Architect-Engineer selection for major projects .....	346(d)
Professional engineers and land surveyors: contract to provide services .....	339(a)	Lottery Commission rules: corrections to N.J.A.C. 17:20-5.3, 6.1, and 8.1 .....	347(a)
Automotive dispute resolution: Lemon Law implementation .....	339(b)		
Thoroughbred racing: registration of colors .....	344(a)	<b>EXECUTIVE ORDER NO. 66(1978)</b>	
<b>TRANSPORTATION</b>		<b>EXPIRATION DATES</b> .....	<b>348</b>
State aid to counties and municipalities .....	307(a)		
State aid for bridge rehabilitation .....	307(b)	<b>INDEX OF RULE PROPOSALS AND ADOPTIONS</b> .....	<b>353</b>
State aid for urban revitalization, special demonstration and emergency projects .....	307(c)	<b>Filing Deadlines</b>	
Parking restrictions along Route 29 in Lambertville .....	308(a)	<b>March 6 issue:</b>	
Parking restrictions along U.S. 30 and Route 168 in Camden County, Route 179 in Lambertville, and Route 93 in Leonia .....	308(b)	<b>Adoptions</b> .....	<b>February 9</b>
Classification of prospective bidders for department projects	309(a)	<b>March 20 issue:</b>	
Regular route autobus carriers: zone of rate freedom .....	310(a)	<b>Proposals</b> .....	<b>February 17</b>
NJ TRANSIT: private carrier capital improvement .....	310(b)	<b>Adoptions</b> .....	<b>February 27</b>
<b>TREASURY-TAXATION</b>		<b>April 3 issue:</b>	
Wholesaling of prepackaged cigarettes .....	311(a)	<b>Proposals</b> .....	<b>March 3</b>
Transfer inheritance tax rules .....	311(b)	<b>Adoptions</b> .....	<b>March 10</b>
<b>TURNPIKE AUTHORITY</b>		<b>April 17 issue:</b>	
Speed limitation on constructor vehicles .....	314(a)	<b>Proposals</b> .....	<b>March 17</b>
		<b>Adoptions</b> .....	<b>March 27</b>

## NEW JERSEY REGISTER

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# RULE PROPOSALS

## AGRICULTURE

### (a)

#### DIVISION OF REGULATORY SERVICES

#### Jersey Fresh Quality Grading Program Products and Manner of Use

#### Proposed Amendments: N.J.A.C. 2:71-2.4, 2.5 and 2.6

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

Authority: N.J.S.A. 4:10-3, 4:10-13 and 4:10-20.

Proposal Number: PRN 1989-68.

Submit comments by March 8, 1989 to:

Robert C. Fringer, Director  
Division of Regulatory Services  
New Jersey Department of Agriculture  
CN 330  
Trenton, New Jersey 08625  
Telephone: (609) 292-5575

The agency proposal follows:

#### Summary

The proposed amendments to the rules for the voluntary "Jersey Fresh Logo" program were developed to aid packers of beets (bunched), beets (topped), cabbage (Chinese), collard greens, cubanelle peppers, cubanelle peppers (red), cucumbers (cukes), cucumbers (slicing type), kale, lettuce (green leaf and red leaf), nectarines, sweet peppers (yellow, bell type), radishes (bunched), shallots (topped), strawberries, summer squash, fall and winter squash, turnips (topped), and watermelons (sugar baby), to allow them to participate in the Jersey Fresh program. Uniform high grade products have greater acceptance by the customer and ultimately increase the demands for the superior quality of these New Jersey grown products.

#### Social Impact

The people affected by these amendments will be the packers using the logo and consumers. Products packed under the logo will enhance the promotion of uniformly packed high quality New Jersey farm products to the benefit of the packers and consumers. Packers will gain new markets for their products, while consumers will have more quality products and an identifiable larger supply of quality products available. The program so far has been shown to be well received by the growers, buyers and consumers.

#### Economic Impact

The economic impact on voluntary logo packers will be very minimal. Packers' costs will be \$.01 per label, per container or \$1.00 for 1,000 imprinted containers. This cost has been proven to be offset by increases in the price received by the packers through the sale of high quality produce.

#### Regulatory Flexibility Statement

The proposed amendments primarily affect farmers, most of which are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; however, the amendments do not impose any reporting, recordkeeping, or other compliance requirements on farmers, unless they voluntarily elect to participate in the Jersey Fresh Quality Grading Program. Should a farmer choose to participate, the costs of participating should be offset by prices received for the produce.

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

2:71-2.4 Agricultural commodities intended to be marketed under the Jersey Fresh Quality Grading Program

(a) Only sweet anise (fennel), apples, asparagus, **beets (bunched), beets (topped)**, blueberries, cabbage, **cabbage (Chinese)**, collard greens, green corn, **cubanelle peppers, cubanelle peppers (red)**, cucumbers, **cucumbers (cukes)**, cucumbers (pickling type), **cucumbers (slicing**

**type)**, eggplants, endive, escarole, herbs (fresh), **kale**, leeks, big Boston lettuce, iceberg lettuce, **lettuce (green leaf and red leaf)**, nectarines, okra, common green onions, parsley, peaches, sweet peppers, **sweet peppers (yellow, bell type)**, sweet potatoes, white potatoes, **radishes (bunched)**, raspberries, romaine, **shallots (topped)**, **strawberries**, summer squash, fall and winter type squash and tomatoes (fresh market), **turnips (topped)**, and **watermelons (sugar baby)** may be identified by the "logo".

(b) All agricultural commodities marketed under the "logo" program shall be produced and packed in New Jersey.

2:71-2.5 Commodity grades, packing requirements, packer identification and containers.

(a) Each container bearing the "logo" shall have the name and address of the packer in letters not less than three-eighths inches in height. Each container printed with the "logo" must be identified by the applicable U.S. grade and the licensed packer's registration number, which also shall be no less than three-eighths inch in height. The registration number shall be printed or marked on the carton in close proximity to the "logo" or the name and address of the registrant. **All containers, packages and packaging materials shall be new.**

(b) Commodities shall be graded, packed, identified and contained as follows:

1. Apples shall be combination U.S. Extra Fancy and U.S. Fancy grade for tray or cell packs and U.S. Fancy grade for apples packed in bags. Color requirements are those for specified U.S. Grades of Apples by variety. Apples of the Red Delicious, Red Rome, Granny Smith and Paul Red varieties may be packed bearing the "logo". Size requirements are as follows: **Bags**—apples shall be a minimum of two and one-quarter inches and up in diameter. Tray or cell packs—maximum count of 125 apples per container. Tray or cell packs shall be packed fairly tight or be packed for a 40 pound minimum net weight for the above listed varieties. [All containers shall be new.] Paper pad is required over top layer of apples in tray or cell packs. Certified controlled atmosphere storage apples are eligible to be packed bearing the "logo" provided the fruit meets the above requirements.

2. Asparagus shall be U.S. No. 1 grade with not less than two-thirds of the stalk length green color. Stalks shall be of the following diameter classifications. Small—five-sixteenths inch to less than eight-sixteenths inch in diameter. Medium—eight-sixteenths inch to less than eleven-sixteenths in diameter. Large—eleven-sixteenths inch to less than fourteen-sixteenths in diameter. Stalks shall be well trimmed. **When packed loose all containers shall have a tight pack.** [All containers shall be new.]

3. Blueberries shall be U.S. No. 1 grade. Size shall meet the requirements of at least Large with a maximum of 129 berries per standard two gill cup. **Individual cups shall be well filled.** [All packaging materials shall be new.]

4. **Beets (bunched) shall be U.S. No. 1 grade. The diameter of each beet shall be not less than one and one-half inches. The pack shall be for 12 bunches per crate or carton. All containers shall have at least a fairly tight pack.**

5. **Beets (topped) shall be U.S. No. 1 grade. The diameter of each beet shall be not less than one and one-half inches. All containers shall be at least fairly well filled.**

6. **Cabbage (Chinese) shall consist of heads of similar varietal characteristics which are fairly firm and are not withered, puffy or burst, and which are free from soft rot seedstems, are not materially affected by discoloration, freezing, disease, insects and mechanical or other injury. Stems shall be cut so that they extend no more than one-half inch beyond the point of attachment of the outermost leaves. Containers shall be packed for nine to 10, 10 to 12, or 12 to 14 heads per container. All containers shall have a tight pack. Tolerance—In order to allow for variations incident to proper grading and handling not more than a total of 10 percent, by count, in any lot may fail to meet the the required specifications, including not more than five per-**

cent for defects seriously affecting the lot including not more than two percent for soft rot. For application of tolerances, see N.J.A.C. 2:76-2.6.

[4.] 7. Cabbage, Domestic type, shall be U.S. No. 1 or U.S. No. 1, Green grade, with the heads being of two pound minimum weight to five pound maximum weight. The U.S. No. 1 grade requires that the heads be well trimmed. All containers, except sacks, shall have a tight pack. The U.S. No. 1, Green grade requires that the heads be fairly well trimmed. [All containers shall be new.]

8. Collard Greens shall be U.S. No. 1 grade. The pack shall be for 18 bunches per container. All containers shall have at least a fairly tight pack.

[5.] 9. Green Corn shall be U.S. Fancy[,] grade with a minimum count of 54 ears per container and when packed in crates the pack shall be tight. [All containers shall be new.] All green corn shall be hydrocooled. All containers shall be marked "hydrocooled".

10. Cubanelle Peppers shall be U.S. No. 1 grade, as specified in the U.S. Standard for Sweet Peppers, for defects and tolerances. Each pepper shall have a minimum diameter of one and three-quarters inches. Color shall be light green to full yellow. All containers shall be at least fairly well filled.

11. Cubanelle Peppers (red) shall be U.S. No. 1 grade, as specified in the U.S. Standard for Sweet Peppers, for defects and tolerances. Each pepper shall have a minimum diameter of one and three-quarter inches with 90 percent of the peppers showing full red color. All containers shall be at least fairly well filled.

[6.] 12. Cucumbers shall be U.S. No. 1 grade, or better, with [2 and 3/8] two and three-eighths inches diameter and six inches minimum length. All containers shall be at least fairly well filled. [All containers shall be new.]

13. Cucumbers (cukes) shall be U.S. No. 1 grade, with two and three-eighths inches maximum diameter and six and one-quarter inches maximum length. All containers shall be at least fairly well filled.

[7.] 14. Cucumbers (pickling type) shall be U.S. No. 1 grade with two inches maximum diameter and [five] six inches maximum length. All containers shall be at least fairly well filled. [All containers shall be new.]

15. Cucumbers (slicing type) shall be U.S. No. 1 grade, with two and one-quarter inches maximum diameter and six and one-quarter inches maximum length. All containers shall be at least fairly well filled.

[8.] 16. Eggplants shall be U.S. No. 1 grade, or better, and reasonably uniform in size. All containers must have at least a fairly tight pack. [All containers shall be new.]

[9.] 17. Endive shall be U.S. No. 1 grade. Plants shall be well trimmed and fairly uniform. All containers shall have at least a fairly tight pack. [All containers shall be new.]

[10.] 18. Escarole shall be U.S. No. 1 grade. Plants shall be well trimmed and fairly uniform. All containers shall have at least a fairly tight pack. [All containers shall be new.]

[11.] 19. Herbs (fresh) shall be clean, have characteristic color and shall not be affected by discoloration, wilting, freezing, mechanical damage or by other means. Herbs shall be free from decay. All containers shall be new. In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, are provided: five (5) percent in any lot which fails to meet the requirements, including therein not more than one-half of one percent affected by decay. Individual packages in a lot may contain not more than double the tolerance specified, provided that at least one defective specimen may be permitted in any package and, provided further, that the average for the entire lot is within the tolerance specified.

[12.] 20. Big Boston lettuce shall be U.S. No. 1 grade, or better. The heads shall be fairly uniform in size. The containers shall have a tight pack, provided the heads are not individually packaged. [All containers shall be new.]

[13.] 21. Fennel (Sweet Anise) shall be U.S. No. 1 grade. Stalks shall be well trimmed. The minimum diameter of each bulb shall be not less than two inches. All containers shall have a tight pack. [All containers shall be new.]

22. Kale shall be U.S. No. 1 grade. The pack shall be for 18 bunches per container. All containers shall have at least a fairly tight pack.

[14.] 23. Leeks shall be fairly clean, tops and bulbs shall be characteristic color. Tops and bulbs must not be affected by discoloration, wilting, freezing, mechanical damage or by other means. Plants shall be free from decay. If tops are trimmed, it must be done so as not to materially affect the appearance of the individual plant. In order to allow for variations incident to proper grading and handling, the following tolerances, by count, are provided: ten percent for plants in any lot which fail to meet the requirements, including therein not more than one percent for plants affected by decay. Individual packages in a lot may contain not more than one and one-half times the tolerance specified, provided that the average for the entire lot is within the tolerance specified. All containers shall have a tight pack. [All containers shall be new.]

24. Lettuce (green leaf and red leaf) shall be U.S. Fancy grade as specified in the U.S. Grades of Greenhouse Leaf Lettuce. The pack shall be for 24 plants per container. All containers shall have at least a fairly tight pack.

[15.] 25. Iceburg lettuce shall be U.S. No. 1 grade, or better. The pack shall be 24 or 30 heads per container. The heads shall be fairly uniform in size. The containers shall have a tight pack. [All containers shall be new.] All lettuce shall be vacuum cooled. The containers shall be marked "vacuum cooled".

[16.] 26. Nectarines shall be U.S. Extra No. 1 grade [with a two and one-quarter inch minimum diameter. When packed in closed containers, the size shall be indicated by marking the container with the numerical count, the pack arrangement, or the minimum diameter or minimum and maximum diameter in terms of inches and not less than one-eighth fractions of inches. Fruit shall be fairly uniform in size]. When packed in cells or molded trays, the fruit shall be fairly uniform in size and the pack shall be at least fairly tight and the containers shall be marked with the numerical count. In all other packs the fruit shall have a two and one-quarter inch minimum diameter and the containers shall be marked with the minimum diameter of the contents in terms of inches and not less than one-eighth fractions of inches. Volume filled or jumble packs shall be at least fairly well filled. All nectarines shall be hydrocooled. All containers shall be marked "hydrocooled". [All containers shall be new.]

[17.] 27. Okra shall be U.S. No. 1 grade. All containers shall be at least fairly well filled. [All containers shall be new.]

[18.] 28. Parsley shall be U.S. No. 1 grade. The pack shall be for 60 bunches per bushel. All containers shall have a tight pack. [All containers shall be new.]

[19.] 29. Common Green Onions shall be U.S. No. 1 grade. The over-all length (roots excepted) of the onions shall be not more than 24 inches nor less than eight inches and the onions shall not be less than one-quarter inch or more than one inch in diameter. All containers shall have at least a fairly tight pack. [All containers shall be new.]

[20. Parsley shall be U.S. No. 1 grade. All containers shall be new.]

[21.] 30. Peaches shall be U.S. Extra No. 1 grade, or better, with a [2 and 1/4] two and one-quarter inch minimum diameter. Containers shall be marked to denote variety and minimum size or count. [All containers shall be new.] All containers shall be at least fairly well filled. All peaches shall be hydrocooled. All containers shall be marked "hydrocooled".

[22.] 31. Sweet peppers (Green or Red, Bell type) shall be U.S. No. 1 grade, or better. Minimum size shall be two and one-half inch minimum diameter and two and one-half inch minimum length. Containers shall be packed to a maximum average of no more than 90 peppers per container. Large-Average no more than 75 peppers per container. Extra Large-Average no more than 65 peppers per container. In lots designated U.S. No. 1 Red, 90 percent of the peppers shall show full red color. All containers shall be at least fairly well filled. [All containers shall be new.]

32. Sweet peppers (Yellow, Bell Type) shall be U.S. No. 1, as specified by the U.S. Standard for Sweet Peppers, for defects and tolerances with 90 percent of the peppers showing full yellow or orange color. Minimum size and/or count pack shall be as specified under the Sweet Peppers (Green or Red, Bell Type) requirements. All containers shall be at least fairly well filled.

[23.] **33.** Sweet Potatoes shall be U.S. Extra No. 1 grade. Maximum diameter shall not be more than [3 and 1/4] **three and one-quarter** inches. Maximum weight shall not be more than 18 ounces. Length shall not be less than three or more than nine inches. Minimum diameter shall not be less than [1 and 3/4] **one and three-quarter** inches. All containers shall be at least fairly well filled. [All containers shall be new.]

[24.] **34.** White potatoes shall be U.S. No. 1 grade and packed to meet the requirements of Size A or Large. "Size A" means the minimum diameter shall be not less than [1 and 7/8] **one and seven-eighths** inches and that the lot shall contain at least 40 percent of potatoes which are [2 and 1/2] **two and one-half** inches in diameter or larger or six ounces in weight or larger. "Large" means that the minimum diameter shall be not less than three inches or the minimum weight shall be not less than 10 ounces and the maximum diameter shall be not more than [4 and 1/4] **four and one-quarter** inches or the maximum weight shall be not more than [sixteen] **16** ounces. All potatoes shall be washed. **All containers shall be packed to meet marked net weight.** [All containers shall be new.]

**35.** Radishes (bunched) shall be U.S. No. 1 grade. The diameter of each root shall be not less than **five-eighths** inch. The pack shall be for **36 bunches per carton or crate.** All containers shall have at least a **fairly tight pack.**

[25.] **36.** Raspberries shall be U.S. No. 1 grade. Berries shall be well colored. Individual cups shall be well filled. [All containers shall be new.]

[26.] **37.** Romaine shall be U.S. No. 1 grade with eight inches minimum length. Plants shall be well trimmed and well developed. All containers shall have a **tight pack.** [All containers shall be new.]

**38.** Shallots (topped) shall consist of shallots of similar varietal characteristics which are fairly well formed, well cured, firm, young and tender, well trimmed, fairly clean, free from mold and/or decay, and not materially affected by foreign material, disease, staining, sunburn, sprouts, insects and mechanical or other injury. Minimum diameter shall be not less than **seven-eighths** inch. All containers except for sacks shall be **fairly well filled.** Tolerance for defects—In order to allow for variations, other than size, incident to proper grading and handling, not more than a total of **10 percent** by count of the shallots in any lot may fail to meet the required specifications, including not more than **five percent** shall be allowed for defects seriously affecting the lot, including not more than **two percent** for shallots affected by mold and/or decay. Tolerance for size—Not more than **five percent**, by count, of the shallots in any lot may fail to meet the size requirements. Application of tolerances—see N.J.A.C. 2:71-2.6.

[27.] **39.** Squash, Fall and Winter (acorn and butternut) shall be U.S. No. 1 grade and shall meet the following size specifications: Acorn shall be a minimum of [1] **one** pound and a maximum of [3] **three** pounds in weight. Butternut shall be a minimum of [1 and 1/2] **one and one-half** pounds and a maximum of [4] **four** pounds in weight. All containers shall be at least **fairly well filled.** [All containers shall be new.]

[28.] **40.** Squash, Summer (yellow and green) shall be U.S. No. 1 grade and shall meet the following size specifications: green type shall be a maximum of nine inches in length and a maximum of [2 and 1/4] **two and one-quarter** inches in diameter; yellow types shall be a maximum of nine inches in length and a maximum of [2 and 1/2] **two and one-half** inches in diameter at the bulb. All containers shall be at least **fairly well filled.** [All containers shall be new.]

**41.** Strawberries shall be U.S. No. 1 grade. Minimum diameter shall be not less than **three-quarters** inch. All containers shall be at least **well filled.**

[29.] **42.** Tomatoes (fresh market) shall be U.S. No. 1 grade "Mixed Colors". Containers shall be marked with either "Maximum Large" or "Extra Large" or "Large" in accordance with the following size specifications: "Maximum Large" shall have a [3 and 15/32] **three and fifteen thirty-second** inch minimum diameter; "Extra Large" shall have a [2 and 28/32] **two and twenty-eight thirty-second** inch minimum diameter and [3 and 15/32] **three and fifteen thirty-second** inch maximum diameter; "Large" shall have a [2 and 17/32] **two and seventeen thirty-second** inch minimum diameter and [2 and 28/32] **two**

**and twenty-eight thirty-second** inch maximum diameter. Containers shall also be marked as follows, in accordance with the facts, "Large to Extra Large" or "Extra Large and Larger". Containers shall be at least **fairly well filled.** [All containers shall be new.]

**43.** Turnips (topped) shall be U.S. No. 1 grade with a **minimum diameter of one and three-quarter** inches. All containers, except for sacks, shall be at least **fairly well filled.**

**44.** Watermelons (Sugar Baby) shall be U.S. No. 1 grade.

2:71-2.6 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Fairly clean" means, in the case of shallots, that the appearance of the individual shallot is not affected by dirt.

"Fairly tight" means, in the case of eggplants, beets (bunched), collard greens, endive, escarole, kale, lettuce (green and red leaf), common green onions, and radishes (bunched) that the package is sufficiently filled to prevent any appreciable movement of the [eggplants] produce and that they are in contact with the lid or cover. In the case of apples, that the apples are of the proper size for molds or cell compartments in which they are packed, and that the molds or cells are filled in such a way that no more than slight movement of apples within molds or cells is possible. The pad over the top layer of apples shall be not more than three-quarter inch below the top edge of the carton. **In the case of nectarines and peaches packed in mold or cell compartments, that they are of the proper size for the mold or cell compartments in which they are packed, and that the molds or cells are filled in such a way that there is no more than slight movement within the molds or cells, and that the pad or tray over the top layer must be in contact with the lid.**

"Fairly well filled" means that in the case of beets (topped), cucumbers, okra, cubanelle peppers (green or red), sweet peppers (green, red or yellow, bell type), sweet potatoes, squash (fall and winter or summer), shallots (topped), tomatoes (fresh market), [summer squash or sweet potatoes] and turnips (topped), except in sacks, are not in contact with the lid or cover, but not more than one-half inch below the lid or cover. In the case of peaches, the container is level full and there is practically no movement of the fruit when the container is closed. In the case of nectarines the contents of the container may be slightly below the top edge but not more than [1/2] one-half inch.

"Firm" means, in the case of shallots, that the edible portion is not soft.

"Tight" means, in the case of iceberg lettuce and Big Boston lettuce, that the layers are completely and tightly filled without injury to the heads. In the case of green corn, when packed in crates the package is filled sufficiently to prevent any movement of the product within the package and it has the proper bulge without causing bruised kernels. **In the case of asparagus (loose), cabbage (domestic and Chinese), fennel, leeks, parsley and romaine, that the packages are sufficiently well filled so as to prevent the product from moving in the container, but not overly filled so that injury to the product results.**

"Well filled" means, in the case of blueberries and raspberries, that the berries are one-quarter to one-half inch above the rim of the cup.

"Well trimmed" means, in the case of asparagus, that at least two-thirds of the butt of the stalk is smoothly trimmed in a plane approximately parallel to the bottom of the container and that the butt is not stringy or frayed. In the case of endive and escarole, that the roots are neatly cut near the point of attachment of the outer leaf stems. In the case of romaine, that the stem is trimmed off close to the point of attachment of the outer leaves. In the case of cabbage,

that the head shall not have more than four wrapper leaves. In the case of Sweet Anise (Fennel), that not more than one coarse outer branch is left on each side of the bulb to protect the tender inside portion, and the portion of the root remaining is not more than one-half inch in length. Tops may be either full length or cut back to not less than [ten] 10 inches except that not more than five of the outer branches may be cut back to less than 10 inches if necessary to facilitate proper packing, but not more than three of these may be on the same side of the bulb. **In the case of shallots, that the tops are no longer than one-quarter inch.**

(a)

**STATE AGRICULTURE DEVELOPMENT COMMITTEE  
Soil and Water Conservation Project Cost-Sharing  
Proposed Amendment: N.J.A.C. 2:76-5.3**

Authorized By: State Agriculture Development Committee,  
Arthur R. Brown, Jr., Chairman.

Authority: N.J.S.A. 4:1C-5f.

Proposal Number: PRN 1989-77.

Submit comments by March 8, 1989 to:

Donald D. Applegate, Executive Director  
State Agriculture Development Committee  
CN 330  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The acquisition of development easements and the creation of eight-year farmland preservation programs and municipally approved farmland preservation programs as provided for in the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, are efforts administered by the State Agriculture Development Committee (SADC) to encourage the preservation of agricultural lands to protect the State's diminishing farmland resources.

Eligible landowners, as defined in N.J.A.C. 2:76-6, may voluntarily apply to sell a development easement, the value of which is determined through an appraisal process outlined in N.J.A.C. 2:76-6.8. The actual purchase occurs by a cost share between the State and county and/or local government, causing a Deed of Easement to be recorded, which permanently prohibits any nonagricultural development on the premises. The restriction runs with the land and is binding upon every successor to the land.

Eligible landowners may also voluntarily apply for the creation of eight-year farmland preservation programs or municipally approved farmland preservation programs. Created by agricultural deed restrictions lasting eight years, these programs also provide eligibility for State cost-sharing with landowners for approved soil and water conservation projects on land so enrolled.

The proposed rule amendment would adjust levels of funding available for development easement purchase and soil and water conservation projects respectively, to provide funding levels more proportionate to current demand for each program.

The proposed rule amendment would eliminate the allocation of \$6 million from the fund for the purpose of providing cost-share grants to landowners for approved soil and water conservation projects, with a new allocation of \$3 million for that purpose established by SADC policy adopted December 15, 1988, as more in line with actual demand for these funds. Adoption of the amendment would leave approximately \$600,000 available for new soil and water conservation projects (projected to be more than sufficient to serve current demand for this program), with the SADC's express intent being to restore that allocation to \$6 million should sufficient additional funding become available.

Removing this obligation would consequently make an additional \$3 million from the fund available to meet the greatly increased demand for development easement purchase funds, for an approximate total of \$33 million remaining available for that purpose.

**Social Impact**

The proposed rule amendment will have a positive impact on New Jersey agriculture and the citizens of the State. The current allocation of \$6 million for approved soil and water conservation projects exceeds

the demand for these funds, while the demand for development easement purchase funds far exceeds monies available for that purpose.

Adoption of the proposed amendment will provide additional funding for development easement purchases without negative impact on the soil and water grant program. Availability of additional funds for easement purchases will enable the State to provide a larger aggregate cost-share match for local easement purchase funds, helping to address the current groundswell of applications, promoting the purchase of development easements from a greater amount of farmland, and enhancing the program's ability to help protect the future viability of State agriculture.

**Economic Impact**

The proposed rule amendment will have a positive economic impact on citizens of the State and on the agricultural industry. The agriculture retention program's greatest current need is for additional funds to purchase easements from a groundswell of applications representing some of the State's most critical farmland. Potential State costs of pending applications for easement purchases now outstrip the funds available for that purpose by roughly six times. Providing a larger aggregate State cost-share match for local easement purchase funds will promote permanent protection of larger, more contiguous masses of farmland, enhancing the long-term economic viability of the State's agricultural industry.

**Regulatory Flexibility Statement**

The majority of land potentially subject to development easements is owned by small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment benefits such landowners by providing additional funds available for development easement purchases, while imposing no reporting, recordkeeping or other requirements on such farmland owners. A farmland owner's offer to sell is voluntary, as is his or her acceptance of any State offer.

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

2:76-5.3 Approved practices and cost-share provisions

(a) (No change.)

(b) The following cost-share provisions shall be applicable for soil and water conservation projects:

[1. The State Agriculture Development Committee shall dedicate \$6.0 million from the fund for the purpose of providing grants to landowners for approved soil and water conservation projects.

i. No more than 25 percent of the \$6.0 million dedicated for soil and water conservation projects shall be aggregately obligated for approved projects in any one county.]

[2.]1. Upon certification of a farmland preservation program or a municipally approved program, the committee shall determine the total eligible [state] **State** soil and water cost-share funds based on common deed ownership in accordance with the following formula:

0 to 50 acres at \$400/acre

51 to 100 acres at \$100/acre

101 to 516.7 acres at \$60/acre

i.-ii. (No change.)

[3.]2. Upon State Soil Conservation Committee approval and recommendation for funding of an application for soil and water project cost-sharing in compliance with N.J.A.C. 2:76-5.6 and upon State Agriculture Development Committee approval, the State Agriculture Development Committee shall obligate funds as approved in the application for up to three years from the date of approval.

i. Approval of funds shall not exceed the amount determined in [(b)2] **(b)1** above.

ii. (No change.)

**(a)**

**STATE AGRICULTURE DEVELOPMENT COMMITTEE**  
**Emergency Acquisition of Development Easements**  
**Proposed New Rules: N.J.A.C. 2:76-9.1 and 9.2**

Authorized By: State Agriculture Development Committee,  
 Arthur R. Brown, Jr., Chairman.

Authority: N.J.S.A. 4:1C-5f and 31.2.

Proposal Number: PRN 1989-78.

Submit comments by March 8, 1989 to:

Donald D. Applegate, Executive Director  
 State Agriculture Development Committee  
 CN 330

Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed new rules aid in the implementation of the emergency acquisition of development easements authorized by recent amendments in P.L. 1988, c.4, to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq.

The proposed rules set forth the emergency conditions under which the State Agriculture Development Committee (SADC) may provide up to 100 percent funding for the purchase of development easements on farmland. Where the SADC finds a substantial likelihood that the use of the land will change from productive agriculture to non-agriculture, the State may provide 100 percent funding for development easement purchases, with provisions for subsequent reimbursement of some funds by the county in those cases where the SADC and County Agriculture Development Board jointly determine that the purchase is in their respective interests and no county funding is immediately available.

**Social Impact**

The proposed new rules will have a positive impact on the preservation of New Jersey agriculture and on affected groups. Providing structure to the emergency acquisition program will promote awareness by farmland owners, counties and municipalities of the procedure and criteria used in making decisions regarding emergency acquisition of development easements. Citizens of New Jersey benefit from the agriculture retention program's expanded ability to preserve agricultural land and protect the benefits it provides.

**Economic Impact**

The proposed new rules will have a positive economic impact on the citizens of the State and on New Jersey agriculture. Utilization of the criteria set forth in the proposed rules ensures that only viable agricultural lands will be preserved, thereby strengthening New Jersey's agricultural industry and the economic benefits it provides to the State.

**Regulatory Flexibility Statement**

The majority of the land potentially subject to development easements is owned by small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules do not impose reporting, recordkeeping or other requirements on such farmland owners. A farmland owner's offer to sell is voluntary, as is his or her acceptance of any State offer.

Full text of the proposal follows.

**SUBCHAPTER 9. EMERGENCY ACQUISITION OF DEVELOPMENT EASEMENTS**

**2:76-9.1 Scope**

This subchapter sets forth the emergency conditions under which the State Agriculture Development Committee (SADC) may provide up to 100 percent funding for the purchase of development easements on farmland pursuant to N.J.S.A. 4:1C-31(c)-(e) as amended.

**2:76-9.2 Emergency purchase conditions**

(a) If the SADC determines that there is a substantial likelihood that the use of the land will change from productive agriculture to non-agriculture, the SADC may provide up to 100 percent of the cost of development easements on the following:

1. On farmland which conforms to the priority criteria set forth in N.J.A.C. 2:76-6 and where the SADC determines that the purchase

would be in the interest of the State regardless of whether the respective county agriculture development board (CADB) is willing to provide funds for the purchase.

2. On farmland which conforms to the priority criteria set forth in N.J.A.C. 2:76-6 and where both the SADC and the respective CADB determines that the purchase is in their respective interests and no county funding is immediately available.

(b) The SADC may require the county to provide additional cost share funds beyond those currently required for future purchases of development easements in the event of the 100 percent SADC funding pursuant to (a)2 above.

**COMMUNITY AFFAIRS**

**(b)**

**DIVISION OF HOUSING AND DEVELOPMENT**

**Relocation Assistance and Eviction**

**Proposed Readoption with Amendments:**  
**N.J.A.C. 5:11**

Authorized By: Anthony M. Villane Jr., D.D.S, Commissioner,  
 Department of Community Affairs.

Authority: N.J.S.A. 2A:18-61.1, 20:4-10 and 52:31B-10.

Proposal Number: PRN 1989-71.

Submit written comments by March 8, 1989 to:

Michael L. Ticktin, Esq.  
 Administrative Practice Officer  
 Department of Community Affairs  
 CN 802

Trenton, NJ 08625

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66 (1978), the Relocation Assistance and Eviction rules, N.J.A.C. 5:11, are scheduled to expire on March 1, 1989. The Department has reviewed these rules and finds that they continue to be necessary for the fair and orderly administration of the relocation assistance statutes (N.J.S.A. 52:31B-1 et seq. and 20:4-1 et seq.) and related provisions of the fair cause for eviction statute (N.J.S.A. 2A:18-61.1 et seq.).

Under the relocation assistance statutes, as implemented by N.J.A.C. 5:11, individuals, businesses and farming operations displaced by property acquisition activities of public entities, publicly funded entities and public utilities are entitled to receive financial benefits and other assistance in finding suitable alternative facilities. These benefits are also provided to persons displaced by various code enforcement activities. The State of New Jersey, through the Department of Community Affairs, provides grants to local governments that file Workable Relocation Assistance Plans, as well as direct assistance to persons displaced by the Department's own code enforcement activities.

In Fiscal Year 1988, grants totalling \$377,000 were provided to 13 municipalities and county agencies. These grants assisted 490 households. An additional 187 individuals or households were assisted directly by the Department of Community Affairs pursuant to its enforcement of the Rooming and Boarding House Act.

**Social Impact**

Failure to readopt these rules would adversely affect both displacing agencies, which would lack the necessary guidelines for discharging their relocation obligations, and the persons entitled by law to receive relocation assistance.

Various changes, such as the reference to Federal relocation regulations as superseding, and the corrected references to the bureau charged with administering the program, provide clarification. Extending the deadline for application to a date 12 months after the date of permanent resettlement addresses cases in which resettlement within 12 months of receipt of a notice to vacate has proven impossible or no written notice was ever given. Removing the \$500.00 limitation on the emergency relocation payment allows greater flexibility in meeting increased housing costs. The changes having to do with moving expenses of businesses and payments in lieu of moving and related expenses reflect hearing and court decisions

in specific cases and are intended to further the goal of uniformity. The notice requirements in cases of termination of assistance are intended to protect the rights of displaced persons.

#### Economic Impact

The revised standards for determining eligibility for full funding of relocation assistance by the Department (budget not in excess of \$2,500,000 rather than \$1,500,000) make approximately 130 municipalities eligible. Fewer than 40 of these have engaged in displacement to date, to the knowledge of the Department. The Bureau of Housing and Community Development estimates that an additional \$50,000 is the most that is likely to be needed annually to fully fund relocation assistance in these municipalities.

The changes made to the eligibility rules for businesses are clarifications based upon hearing and court decisions. By including them in the rules, the Department reduces the likelihood that some businesses will get forms of compensation that others who are similarly situated have been found not to be entitled to.

#### Regulatory Flexibility Statement

The rules proposed for re-adoption, as amended, do not impose reporting or recordkeeping requirements upon small businesses. However, a small business that applies for relocation assistance will have to be in a position to document any benefit claim that it makes. There are no procedural requirements for establishing and documenting a claim that would create any hardship for any business, big or small, that has maintained necessary records in some appropriate manner.

Residential landlords who qualify as small businesses are affected by the procedures required to be followed in code enforcement related evictions. However, these procedures are simple and straightforward and should not, in the judgment of the Department, impose any particular hardship upon any landlord.

**Full text** of the proposed re-adoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:11.

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

#### 5:11-2.1 Building, housing and health code enforcement

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

(d) No person displaced by code enforcement shall be eligible for benefits if the code violation which resulted in displacement was primarily caused by that person's own conduct and not by factors for which the owner is liable under [N.J.A.C.] N.J.S.A. 20:4-4.1.

1. (No change.)

#### 5:11-2.2 Programs of acquisition

(a) Whenever any State Agency (except the New Jersey Department of Transportation), unit of local government or publicly funded entity acquires real property that causes the displacement of people, businesses, or farm operations, the said State Agency, **unit of local government or publicly funded entity** shall provide relocation payments and assistance as provided in [subchapters 3 and 4 of this chapter] N.J.A.C. 5:11-3 and 4; **provided, however, that if any acquisition of real property is made using funds provided by any Federal agency, all relocation payments shall be made in accordance with any applicable Federal regulations that provide for a higher level of benefits.**

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

#### 5:11-3.1 Relocation payments generally

(a) (No change.)

(b) Claims for relocation assistance must be filed within 12 months of [receipt by the claimant of the notice to vacate] **the date of permanent resettlement.**

#### 5:11-3.3 Emergency relocation

In the event a displacing agency causes a displacement that [required] **requires** emergency relocation, the displacing agency shall provide a lump sum payment of [not more than \$500.00] **such amount as may be needed** so that the displacee may obtain living quarters until permanently relocated. This payment shall be available immediately upon the displacement and shall be charged against the total amount payable in accordance with the statute.

#### 5:11-3.5 Rental assistance payments

(a) A family or an individual lawfully occupying a rental dwelling unit for a period of not less than 90 days prior to the eligibility date as specified [and vacating] **who vacates** the rental dwelling unit after **receiving** governmental notice to vacate and **who** rents and occupies comparable decent, safe and sanitary replacement housing shall be eligible for a rental assistance payment in an amount not to exceed \$4,000 **or such higher amount as may be established by statute.**

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

#### 5:11-3.9 Moving expenses [: business] of businesses

(a) A relocation payment for moving expenses of a business shall be limited to the following items, as applicable:

1.-2. (No change.)

3. The actual reasonable and necessary cost of reconnecting utility service to machinery and equipment, including, without limitation, the cost incurred in adapting or converting relocated machinery or equipment to use a different type of power supply, to the extent that these services were required in the former location. **Expenses incurred in providing utility service from the right-of-way to the building or improvements are excluded.**

4. The actual reasonable and necessary cost incurred for any physical changes in or to an existing building to which a building relocates in order to accommodate the machinery and equipment relocated. **Physical changes beyond those necessary to accommodate the machinery and equipment and which enhance the property's value are excluded, as are changes necessary to meet code requirements except when necessary to install specific equipment moved from the former location.** The amount incurred shall not exceed the fair market value of the machinery and equipment requiring the physical change. In the event the cost does exceed the fair market value of the machinery and equipment, the displacing agency shall then be responsible to pay only the fair market value.

#### 5:11-3.12 Payment in lieu of moving and related expenses

(a) The owner of a displaced business may receive an in lieu of moving and related expenses payment equal to the average net income for the last two years, but not less than \$2,500 nor more than \$10,000.

**1. A person whose sole business at the displacement location is the rental of the property to others, or the owner of an outdoor advertising display at the displacement location, shall not qualify for a payment under this section.**

(b) In order **for an applicant** to be eligible for an in lieu payment, the displacing agency shall determine that:

1.-3. (No change.)

(c) (No change.)

#### 5:11-4.4 Providing housing

(a) Whenever an individual is eligible for relocation payments and assistance, a displacing agency may, at its discretion, directly provide decent, safe and sanitary units, whether subsidized or not, that are not less desirable than the unit from which the displacee is displaced. In the event the displacee unreasonably rejects the housing so offered, the duty of the displacing agency to provide assistance is ended.

**(b) Any displacing agency that terminates assistance pursuant to (a) above shall notify the displacee in writing of its intention to terminate assistance and the reasons therefor and shall advise the displacee of his or her right of appeal in accordance with N.J.A.C. 5:11-9.2**

#### 5:11-8.2 Funding criteria

(a) A municipality meeting the following criteria may receive the total cost of relocation assistance and payments:

1. (No change.)

2. A budget of less than [\$1.5] **\$2.5 million;**

3.-4. (No change.)

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

#### 5:11-9.1 Administrative agency

These [regulations] **rules** shall be administered by the Bureau of Housing [Services] **and Community Development** of the Division of Housing **and Development**, Department of Community Affairs, [363 West State Street] **CN-806**, Trenton, New Jersey 08625.

## 5:11-9.2 Right of hearing and time of filing

(a) Any person aggrieved by a final determination by a displacing agency other than a State agency may appeal such determination to the Bureau of Housing [Services] and Community Development, which shall thoroughly review the matter and issue its findings as to the merits of the claim for relocation payments or benefits. Such appeal shall be made within 15 days of receipt of written notice of the determination.

(b) The Division of Housing and Development shall provide an administrative hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., to any person aggrieved either by a final determination of a displacing agency which is a State agency or by findings issued by the Bureau of Housing [Services] and Community Development pursuant to (a) above. Such hearing shall be conducted under the auspices of the Office of Administrative Law and the final decision shall be made by the Commissioner. Any request for a hearing shall be made within 15 days of receipt of written notice of the State agency determination or the findings of the Bureau of Housing [Services] and Community Development, as the case may be.

(c) The parties to any hearing before the Office of Administrative Law shall be the displacing agency and the person aggrieved by the final determination of such agency.

1. Representatives of the Bureau of Housing [Services] and Community Development may appear at any such hearing to testify as to the findings of the [bureau] Bureau.

2. (No change.)

(a)

## DIVISION OF HOUSING AND DEVELOPMENT

### Uniform Construction Code Utility Load Management Device Installation Programs

#### Proposed New Rule: N.J.A.C. 5:23-2.18A

Authorized By: Anthony M. Villane Jr., D.D.S., Commissioner,  
Department of Community Affairs.

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

Proposal Number: PRN 1989-70.

Submit comments by March 8, 1989 to:  
Michael L. Ticktin, Esq.  
Administrative Practice Officer  
Department of Community Affairs  
CN 802  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

This proposed new rule was drafted in response to a request by the Atlantic Electric Company, which is scheduled to begin a program of installing load management devices in self-selected customer homes in April of 1989. A load management device attaches to an existing fixture in the customer's home, monitors peak usage, and in exchange for a yearly rate reduction for the customer, enables the utility to reduce service during relatively infrequent occasions of high peak demand.

Installation of load management devices, which are all identical in design and function, is to be accomplished by teams of contractors who will "blanket" scheduled municipalities over a short period of time. It was the utility's concern that to require permits and inspections for every installation would burden municipalities with a dramatic, but short term, demand for electrical inspections, and that this would, in turn, burden homeowners, who would have to schedule these inspections and arrange to be home during the day to allow the inspector entry.

Because the load management devices are identical, and because they are being installed by teams of qualified contractors who have received special instruction from the utility, the Department believes a less comprehensive inspection effort would suffice to protect the public's health and safety. At the same time, the utility has agreed to provide educational sessions for Department employees and municipal subcode officials to acquaint them with the load management device and the installation

procedure to be followed. Residences in which installation cannot be done in the routine manner will be excluded from eligibility. The utility will provide clerical assistance to the municipalities affected by gathering applicant data and mass processing application forms.

Permit fees will be paid in the amount of 30 percent of the total amount that would otherwise be due for all permits issued for this work in that municipality, and inspections will be done by the municipality, at random, on 30 percent of the installations. In the event that a defect rate of 10 percent or greater is found in the work of any utility contractor, the Department will be notified. The Department will investigate and issue a finding which in all likelihood will require that the remaining installations performed by that contractor in each municipality in which that contractor has performed work will be inspected and the remaining fee will be paid to each such municipality. In addition, any contractor whose work is 10 percent or more defective will no longer be allowed to participate in the program.

The Department will tabulate weekly reports from the municipalities and the utility regarding inspections. If, at any time, the defect rate for the whole program exceeds five percent, fee payment will be increased to 50 percent of the total and random inspections will be performed on 50 percent of the installations in each affected municipality.

If, at any time, the Department has reason to believe that the public safety is being compromised, or that contractors or others are in any way acting to circumvent the random inspection program, the Department will suspend the program until an assessment can be made and appropriate remedies can be instituted.

The utility will coordinate its installation program through a computer system and will submit data both to the municipalities affected and to the Department. The municipalities shall review this data for completeness and accuracy and, if their review indicates it is correct, they may indicate their approval to the Department in lieu of compiling separate reports.

#### Social Impact

This rule will benefit the affected utility and its customers by enabling them to quickly and efficiently install a large number of identical devices without unduly burdening the municipalities in which the properties are located or compromising public safety. The devices themselves save money and encourage energy efficiency for the utility and its customers.

#### Economic Impact

There is a lessened economic burden on the regulated public because of this rule. The percentage number of inspections and commensurate permit fee reduction is intended to enable municipalities to handle a dramatic but short-term demand for electrical inspections without a substantial increase in costs or unacceptable delays.

Because installation is performed under the auspices of the utility in exchange for a rate reduction, a direct charge will not be collected from the homeowner.

#### Regulatory Flexibility Statement

This proposed rule has no differential effect on large and small businesses. While this rule was drafted in response to the specific needs of a particular utility, it is anticipated that any other public utility wanting to implement a similarly scaled program could either use the provisions of the rule or request such amendments as might be necessary to accommodate its program.

The proposed rule would benefit contractors and suppliers engaged in the installation program, as well as customers, including small businesses, whose service options are increased and whose rates are reduced.

Full text of the proposal follows:

#### 5:23-2.18A Utility load management device installation programs

(a) Whenever a public utility proposes to undertake a program of installing load management devices at the properties of a substantial number of service customers within a limited period of time, it may apply to the Department for permission to utilize the procedure set forth in this section.

(b) A utility with a program to install load management devices shall submit detailed information to the Department on the design of the device.

(c) The utility shall provide an educational program acceptable to the Department to acquaint any interested Department personnel and municipal subcode officials with the device and with installation and operating procedures.

(d) The utility shall insure that all devices to be installed are identical in design, listed and labeled or otherwise approved according to this chapter for their intended use.

(e) At least one month in advance of any installations, the utility shall submit to the Department, and to each affected municipality, notice of the anticipated number of installations to be performed in each municipality. A maximum and a minimum figure may be submitted where there is uncertainty about the number to be scheduled by customers. An approximate number of weeks for installations in that municipality shall be given along with an approximate number of installations per week.

1. Each week, in advance of installation, the utility shall notify the municipality of any change in the anticipated number of installations for that week. No weekly number of installations shall be so great that the cumulative number of installations in the municipality shall exceed the maximum anticipated number submitted.

2. Prior to the commencement of any installation, and as soon as may be practicable, the utility or its contractors will provide to each municipality notice of the actual sites of installations.

3. The Department and the municipalities shall be notified as soon as possible in the event of any change in existing schedules by the utility or its contractors.

(f) On the Monday following installations, the utility shall submit to each municipality completed permit applications for all installations completed in the municipality's jurisdiction during the preceding week. A listing of all permits so delivered shall be filed by the utility with the Department.

(g) Applications shall bear the name of the installation contractor and the date of installation. If, for any reason, a permit application is found to have been submitted in error, the utility or its contractors shall notify the municipality and the Department as soon as possible.

(h) The municipality shall submit weekly reports to the Department which shall include a listing of permit applications received pursuant to (f) above together with the following information: "installations completed—permit applications received", "errata", if applicable, and, pursuant to (k) below, "installations inspected—date, contractor, pass or fail". If a municipality so chooses, it may review and certify data presented to it by the utility, if that data is complete and accurate. Data on pass/fail rates for inspections shall specify each contractor so that program-wide pass/fail rates may be tabulated.

(i) If any municipality or the Department has reason to suspect that permit applications are being mishandled or carelessly accounted for, an investigation may be conducted of the utility's permit files for this project and of any permits in the possession of individual contractors in the utility's employ for this project.

(j) The utility shall pay to each municipality 30 percent of the permit fees otherwise due and owing.

(k) The municipality shall inspect 30 percent of the installations performed and shall record the results of those inspections to be forwarded to the Department in its weekly report pursuant to (h) above. Any data submitted in reports by the utility to the municipality and the Department may be omitted from the municipality's report, if, after reviewing the utility's data the municipality finds it to be complete and accurate.

(1) If a municipality discovers a defect rate of not less than 10 percent for any contractor employed by the utility, the Department shall be immediately notified. The Department shall investigate and, in the interest of public safety, shall be authorized to order that:

1. The offending contractor cease to be employed by the utility for this project;

2. The utility remit the fees necessary to inspect all existing installations of the offending contractor in all municipalities where that contractor has performed work;

3. That each municipality affected perform inspections of all the offending contractor's existing installations; and

4. That the utility or its designees correct or remove all defective installations to the satisfaction of the municipal officials.

(m) If, at any time, the Department tabulates a program-wide defect rate equal to or exceeding five percent, the utility shall be

notified and the inspection rate and fee rate in (j) and (k) above shall rise to 50 percent.

(n) If the five percent or greater program-wide defect rate cannot be reduced within two weeks, the program may be terminated by the Department by notifying the utility and all affected municipalities.

(o) A municipality in which a defect rate equal to or greater than 10 percent has been twice recorded and which has reason to believe that the program cannot be successfully implemented within its jurisdiction may notify the Department and the utility of the need for termination of the program in that municipality. The Department, upon verifying the accuracy of the municipality's claim, shall issue a notice to the utility and to the municipality ordering the termination of the program in that municipality.

## (a)

### COUNCIL ON AFFORDABLE HOUSING

#### Substantive Rules: Rental Housing Fair Share Credit

#### Proposed Amendment: N.J.A.C. 5:92-14.4

Authorized By: New Jersey Council on Affordable Housing,

James L. Logue, III, Chairman.

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

Proposal Number: PRN 1989-84.

Submit comments by March 8, 1989 to:

Douglas V. Opalski, Executive Director  
New Jersey Council on Affordable Housing  
CN 813  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

N.J.A.C. 5:92-14.4 allows communities to receive a credit against their fair share of one and a third units for every rental unit constructed and occupied in the municipality. Municipalities that have developed rental housing have requested and received waivers from this provision of subchapter 14. Specifically, the Council has granted the one and a third credit prior to construction and occupancy when the municipality has given or obtained a firm commitment for the construction of low and moderate income rental units.

Since the Council has responded consistently to these waiver requests, the Council has decided to propose an amendment to N.J.A.C. 5:92-14.4(d) that will eliminate the need to request these waivers.

#### Social Impact

The proposed amendment will have a positive social impact because it clarifies existing Council policies, allowing municipalities to proceed with rental planning without considering the need to obtain a waiver from this credit provision.

#### Economic Impact

The proposed amendment will have a positive economic impact because it clarifies through regulation existing Council policies, which will result in municipalities no longer having to bear the administrative cost of requesting waivers from the credit provision.

#### Regulatory Flexibility Statement

The proposed amendment will have no impact on small businesses, as it relates to rental unit credit available to municipalities.

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

5:92-14.4 Rental housing

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

(d) All municipalities, including those not required to develop a rental housing component, shall receive a one and a third unit credit, for each rental unit constructed and occupied in their municipality, until such time that the constructed rental housing units are in excess of 20 percent of the municipal fair share calculated after crediting, after adjustments and after indigenous need. **The Council may grant municipalities the one and a third unit credit when it determines that**

the municipality has provided or received a firm commitment for the construction of low and moderate income rental units that includes a construction timetable coinciding with the period of substantive certification.

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

## EDUCATION

### (a)

#### STATE BOARD OF EDUCATION

##### Core Proficiencies

**Reproposed Amendments: N.J.A.C. 6:8-1.1, 4.3, and 7.1; 6:39**

**Reproposed New Rules: N.J.A.C. 6:39-1.3 and 1.6**

**Proposed New Rule: N.J.A.C. 6:39-1.7**

Authorized by: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Authority: N.J.S.A. 18A:1-1, 4-15 as supplemented and amended by N.J.S.A. 18A:7A-1 et seq.

Proposal Number: PRN 1989-79.

Submit comments by March 8, 1989 to:

Irene Nigro, Rules Analyst  
NJ Department of Education  
225 West State Street, CN 500  
Trenton, New Jersey 08625

The agency reproposal follows:

#### Summary

Proposed amendments to these rules were published November 7, 1988 in the New Jersey Register at 20 N.J.R. 2619(a). The following proposal supersedes the proposal at 20 N.J.R. 2619(a).

In the Fall of 1986, a Statewide Panel on High School Proficiencies was convened. The specific charge to the panel was to study the issues of proficiencies—how they should be developed and assessed and their impact—and to report its recommendations to the Commissioner of the Department of Education by December 1, 1987. The proposed amendments to N.J.A.C. 6:8-1.1, 3, 7.1 and N.J.A.C. 6:39, which are a result of the Commissioner of Education's response to the recommendations of the Statewide Panel on High School Proficiencies, are summarized as follows:

N.J.A.C. 6:8-1.1 has been amended to include definitions for the words "core course proficiencies" and "curriculum".

N.J.A.C. 6:8-4.3(a)3i has been amended to include county superintendent review to determine that proficiencies have been developed and that methods for the assessment of these proficiencies have been implemented for all courses that have been established to meet State and local high school graduation requirements.

N.J.A.C. 6:8-7.1(c)2i has been amended to require:

1. The Commissioner to establish and recommend for approval, to the State Board of Education, uniform Statewide core course proficiencies for those curriculum areas mandated by the State Board of Education for high school graduation and for foreign languages.

2. That the core course proficiencies be developed and recommended to the Commissioner for approval through a collaborative process which shall include curriculum convocations; curriculum panels, composed of outstanding educators and others; and local school district review.

3. District boards of education to establish core proficiencies for each of the courses mandated by the State Board of Education, including the Statewide core course proficiencies.

4. District boards of education to establish core proficiencies for all courses which are taken to meet local graduation course and credit requirements.

5. District boards of education to establish core proficiencies for all courses other than those required for high school graduation in which students are enrolled to meet local graduation course and credit requirements.

6. The Department of Education to assess core proficiencies, using Statewide tests, in the four key curriculum areas (mathematics, science, English, and social studies) mandated by the State Board of Education for high school graduation.

7. District boards of education to be responsible for the specific methods and standards of mastery for Statewide core proficiencies assessment, as mandated by these rules.

8. The State Department of Education to assist school districts in identifying and/or developing school district assessment techniques and instruments through curriculum panels, prepared assessment material, and regional training activities. The Department shall also identify those school districts that have effective assessment programs which can serve as models.

N.J.A.C. 6:39 has been reorganized and amended to include the monitoring of core course proficiencies and the assessment of these proficiencies in the Statewide process for monitoring of school districts.

#### Social Impact

The proposed amendments are expected to produce several benefits. They will create equity in access to the fundamental knowledge critical to achieving success in the mainstream of American life, and indicate the effectiveness of schools and districts in helping students learn the core proficiencies. The amendments will serve as a basis for assisting schools whose students are not performing well in the core proficiencies. They will further indicate to the public the competency of students Statewide in the core proficiencies for the mathematics, science, English, and social studies courses commonly taken by most students to meet the State Board of Education high school curriculum graduation requirements.

#### Economic Impact

District boards of education are currently required to develop and assess course proficiencies. Increased costs to local school districts would vary and depend on the level of upgrading necessary. The proposed development of the proficiencies and Statewide testing is projected to cost the State approximately \$1.3 million annually, once fully implemented.

#### Regulatory Flexibility Statement

The proposed amendments will have no reporting, recording, or compliance requirements for small businesses. All requirements of the amendments impact upon New Jersey public school districts.

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

#### 6:8-1.1 Words and phrases defined

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

"Core course proficiencies" means the essential knowledge and skills, as compared to the sum of all knowledge and skills, learned in a course.

"Curriculum" means planned learning opportunities in order for students to achieve the intended outcomes of instruction (that is, all knowledge, abilities, skills, attitudes, values, behaviors, and other attributes intended for acquisition by learners).

#### 6:8-4.3 Evaluation of elements and standards

(a) The following [ten] **10** essential elements and the prescribed indicators of standards of acceptable performance shall be [evaluted] **evaluated** by the monitoring term under the supervision of the county superintendent of schools as specified in this section.

1. The annual educational planning element of the district shall be rated acceptable upon demonstration of performance in three indicators as follows:

i. (No change.)

ii. Three or more written educational objectives which shall include standards of pupil achievement and action plans based upon district needs shall be developed annually in consultation with teaching staff members and the community under the direction of the chief school administrator in accordance with requirements established by the [commissioner] **Commissioner**.

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

iii. A long-range plan containing a five-year written schedule and procedure for evaluation and improvement of all curriculum and educational services shall be developed and implemented.

2. The school and community relations elements of the district shall be rated acceptable upon documentation of performance in five indicators as follows:

- i. (No change.)
- ii. The district board of education shall provide parents or guardians as well as other district residents and teaching staff members opportunities for discussion regarding State rules and local [school] **district** procedures for implementation of district goals, objectives and standards through one or more public meetings of the district board of education. The initial meeting shall be held prior to September 30 of each year. The district board shall publish a special notice 10 days in advance of each meeting describing the purpose, listing the items to be discussed and indicating the availability of material relative to such items. The discussion at such meeting(s) shall include, but not be limited to:
  - (1) (No change.)
  - (2) The result of:
    - (A) (No change.)
    - (B) The [statewide] **Statewide** and district testing programs including analysis and interpretation of schools and district performance.
    - (C) No change.)
  - (3) The documents listed in (a)2ii (1) and (2) above shall be accessible to the public for inspection at such meetings and shall be available upon request at the earliest possible time in accordance with the provisions of the public records law, N.J.S.A. 47:1A-1 et seq.:
- iii.-v. (No change.)
- 3. The comprehensive curriculum and instruction element of the district shall be rated acceptable upon documentation of performance in seven indicators as follows:
  - i. The district board of education shall approve annually a curriculum for all grades from pre-kindergarten through grade 12 for all subjects including all State mandated programs and services.
    - (1)-(2) (No change.)
  - (3) **In accordance with N.J.A.C. 6:8-7.1(c)2iii and 6:39-1.3(b), district boards of education shall provide for:**
    - (A) **Development of course proficiencies, which shall include, but not be limited to, those identified and established by the Department of Education as core course proficiencies;**
    - (B) **Establishment of a standard of student mastery; and**
    - (C) **Annual assessment of all students in those proficiencies necessary to meet all state and local high school graduation requirements.**
- ii.-vii. (No change.)
- 4.-7. (No change.)
- 8. The mandated basic skills test element of the district shall be rated acceptable upon documentation of achievement in two indicators as follows:
  - i. Seventy-five percent of the pupils in grade nine of each school shall have passed the State-mandated High School Proficiency Test pursuant to N.J.A.C. 6:39-1.2(a) and (b).
  - ii. (No change.)
- 9. The equal educational opportunity and affirmative action element of the district shall be rated acceptable by documentation of performance of three indicators as follows:
  - i. (No change.)
  - ii. Annually, the district shall review progress toward the objectives of the State-approved affirmative action plans for classroom and employment practices of the district.
  - iii. (No change.)
- 10. (No change.)
- 6:8-7.1 Promotion, remediation, and graduation procedures
  - (a) District boards of education shall adopt policies and procedures for:
    - 1. Pupil promotion, related to district goals, objectives, and pupil proficiency;
    - 2. (No change.)
    - 3. High school graduation requirements, pursuant to law and rule, which are consistent with the achievement of State and district goals, objectives, and pupil proficiency with particular reference to reading, writing, and mathematics skills as specified in (b), (c), (d), and (e) below;
    - 4. The exemption of handicapped pupils from the high school graduation requirements, pursuant to N.J.A.C. 6:28-3.6 and 4.4, 6:39-[1.5]1.7, and (b)6 below;

- 5. Annual notification to pupils and parent(s) or guardian(s) of the policies and procedures for pupil promotion, remediation, and the high school graduation requirements;
- 6. Notification to each entering ninth grade pupil and his or her parent(s) or guardian(s) of all State and local high school graduation requirements. In addition, at the beginning of each course required for graduation, each district board of education shall distribute a list of proficiencies required for successful completion of that course to all pupils and their parent(s) or guardian(s). **These proficiencies lists shall include, but not be limited to, the core course proficiencies identified by the Department of Education in (c)2iii below;**
- 7. Notification to each pupil and parent(s) or guardian(s) at appropriate times during the school year of the pupil's progress in meeting the promotion, **course** proficiencies and the high school graduation requirements;
- 8.-10. (No change.)
  - (b) District boards of education shall adopt policies and procedures for high school graduation of all pupils, pursuant to law and rule, which shall include, but not be limited to, performing at or above the State minimum levels of pupil proficiency on the State-mandated High School Proficiency Test in reading, writing, and mathematics skills.
    - 1. Pupils who perform below State minimum levels of pupil proficiency on one or more areas of the State-mandated High School Proficiency Test shall be provided with an individual comprehensive assessment, as specified in N.J.A.C. 6:8-6.1. Based on the individual comprehensive assessment, the pupil shall receive the necessary services to remedy the identified deficiencies. Such services shall include, but not be limited to, the development and implementation of an Individual Student Improvement Plan. This individual plan may be carried out through the regular program or through an extended school day, extended school week, or extended school year. Comprehensive pupil assessment and re-evaluation of the individual plans shall take place at least once each year until all identified deficiencies have been remediated.
    - 2. Each [local school] **district board of education** shall develop procedures for the development of Individual Student Improvement Plans. These procedures shall include, but not be limited to, those procedures set forth in N.J.A.C. 6:8-6.2.
    - 3. Pupils who perform below State levels of pupil proficiency on one or more areas of the State-mandated High School Proficiency Test shall be provided an opportunity to demonstrate mastery in each academic year.
    - 4. Pupils who perform below State minimum levels of pupil proficiency on one or more areas of the State-mandated High School Proficiency Test and have satisfied all other State and local graduation requirements shall be provided an additional evaluation during the twelfth year which is based on the Individual Student Improvement Plan required under [paragraph] (b)1 above. This evaluation, the Special Review Assessment, may include, but is not limited to:
      - i.-iii. (No change.)
      - iv. Practical demonstrations of specific skill mastery which occur either in or outside of school, but which are not part of regular course work;
      - v.-vii. (No change.)
      - viii. Visual, auditory, and/or medical data, as appropriate;
      - ix. (No change.)
      - x. Examination of pupil proficiencies in other areas[.];
- 5. The findings of the evaluation required in (b)4 above shall be recorded on a Special Review Assessment Student Profile Form developed by the Department of Education. An independent evaluation of these data must be made by a local district review panel comprised of at least three teaching staff members not currently instructing the pupil. On the basis of the evidence listed in (b)4 above the recommendations of the review panel, the building principal and the chief school administrator may certify satisfactory attainment of the State minimum levels of pupil proficiency in reading, writing, and/or mathematics. Whether or not such certification occurs, the district must retain the Student Profile Form, including all attachments, for one year after the pupil's class graduates. If such certification occurs, the Special Review Assessment Student Profile Form

must be forwarded to the county superintendent of schools by March 1 of the regularly scheduled graduation year. Based upon the documentation provided by the local district, the county superintendent of schools must certify whether or not the State minimum levels of proficiency have been achieved and notify, in writing, the chief school administrator of this decision.

6. An **educationally** handicapped pupil must meet all State and local high school graduation requirements in order to receive a State-endorsed high school diploma, [unless exempted in his or her Individualized Education Program and with the written approval of the chief school administrator. An exemption from the High School Proficiency Test shall be granted if a pupil would be adversely affected by taking the test. An exemption from the High School Proficiency Test shall be granted if the pupil's Individualized Education Program does not include the proficiencies measured by the test:] **pursuant to the provisions established under N.J.A.C. 6:28.**

i. A handicapped pupil who has not been exempted from the proficiencies or has performed below the State minimum levels of pupil proficiency on one or more areas of the [state] State-mandated High School Proficiency Test shall participate in the Special Review Assessment.

7. Any out-of-school youth or adult age 18 or older who has otherwise met all State and local graduation requirements, but has failed to pass the State-mandated High School Proficiency Test, may return at times which have been scheduled and publicly announced by the district for the purpose of taking the necessary test. Upon certification of passing the test, a State-endorsed diploma will be granted by the high school of record.

(c) Minimum high school graduation requirements include the following:

1. District boards of education providing high school diplomas, in cooperation with any sending district(s), shall adopt policies and procedures for defining minimum high school curriculum requirements and locally determined proficiencies, **including the Statewide core course proficiencies** therein, pursuant to law and rule, which shall include, but not be limited to:

i. Requiring the successful completion of a program of study in grades nine through 12, effective with the September, 1987 grade nine class, which shall include, but not be limited to:

(1) (No change.)

(2) Two credit years of mathematics, effective through August, 1990; three credit years of mathematics, effective with the September, 1990 grade nine class;

(3) Two credit years of social studies/United States history, as required by N.J.S.A. 18A:35-1 through August 1988, and one additional credit year of world history/cultures, effective with the September, 1988 grade nine class;

(4) One credit year of natural or physical science through August, 1989; two credit years of natural or physical science, effective with the September, 1989 grade nine class;

(5) One credit year of physical education, health and safety for each year of enrollment, as required by N.J.S.A. 18A:35-7[.];

(6) (No change.)

(7) One-half credit year of career education. This requirement may be satisfied through the alternative methods of infusion into existing courses, course equivalents, or a career education course. For credit to be awarded, career education shall be offered as a course, as specified in (c)ii below or in (d) below.

ii. Pupils may meet the curriculum requirements set forth in (c)i above through demonstration of mastery of [the locally determined] **Statewide core and locally determined course** proficiencies in each of the above curriculum areas or through program completion procedures noted in (d) below. This determination shall be made by the district board of education.

2. Pupil proficiencies in (c) 1 above shall be developed as follows:

[i. The Commissioner of Education shall provide guidelines to district boards of education for the development of local proficiencies for each curriculum area.]

i. **The Commissioner shall recommend to the State Board of Education uniform Statewide core course proficiencies for those curriculum areas mandated by the State Board for high school graduation and for**

foreign languages. Upon the receipt of the Commissioner's recommendation, the State Board of Education shall review and approve by resolution the core course proficiencies. The core course proficiencies shall be developed and recommended to the Commissioner through a collaborative process which shall include:

(1) Curriculum convocations,

(2) Curriculum panels, composed of outstanding educators and others; and

(3) Local school district review.

ii. Core course proficiencies shall be developed within the following timelines for the respective curriculum areas:

(1) Mathematics, beginning August 1, 1989 and concluding October 1, 1990;

(2) Natural or physical science, beginning August 1, 1989 and concluding October 1, 1990;

(3) English, beginning August 1, 1990 and concluding October 1, 1991;

(4) Social studies, beginning August 1, 1990 and concluding October 1, 1991;

(5) Foreign languages, beginning August 1, 1991 and concluding October 1, 1992;

(6) Fine, practical and/or performing arts, beginning August 1, 1992 and concluding October 1, 1993;

(7) Career education, beginning August 1, 1992 and concluding October 1, 1993; and

(8) Health, safety and physical education, beginning August 1, 1993 and concluding October 1, 1994.

iii. For each of those courses mandated by the State Board of Education, local school districts shall establish course proficiencies, including, but not limited to, the Statewide core proficiencies in the following curriculum areas:

(1) Mathematics by September 1, 1991;

(2) Natural or physical science by September 1, 1991;

(3) English by September 1, 1992;

(4) Social studies by September 1, 1992;

(5) Foreign languages by September 1, 1993;

(6) Fine, practical, and/or performing arts by September 1, 1994;

(7) Career education by September 1, 1994; and

(8) Health, safety and physical education by September 1, 1995.

[ii.] iv. District boards of education shall establish [proficiency requirements in] **course proficiencies** for each course in all curriculum areas. Upon approval of these proficiencies by the district board of education, [demonstration of] **all students shall demonstrate** mastery [will be required] **through specified methods and instruments of assessment in all courses** as a condition of graduation.

v. The Statewide core course proficiencies in the content areas set forth in (c)2ii above shall be reviewed by panels of outstanding local educators convened by the Commissioner every five years following their establishment. Based upon the recommendations of the panel, the Commissioner shall consider the revision of the core course proficiencies.

(d) Subject to approval of the State Board of Education:

i. Each district board of education shall establish graduation requirements on the basis of either course credits, program completion, or a combination of course credits and program completion.

i. Course credit requirements shall be established as follows:

(1) Each four-year high school shall establish a minimum number of not less than 92 credits to be required for graduation, effective with the September, 1987 grade nine class; not less than 110 credits, effective with the September, 1988 grade nine class.

(2) Each three-year high school shall establish a minimum number of not less than 69 credits to be completed in grades 10 to 12 inclusive, effective with the September, 1987 grade [ten] 10 class; not less than 82.5 credits, effective with the September, 1987 grade [ten] 10 class.

(3) (No change.)

(4) Credit toward graduation shall be awarded by the following method:

(A) (No change.)

(B) Credit may be assigned by each district board of education for curricular activities, as defined in N.J.A.C. 6:27-1.13.

ii. Credit year requirements set forth in (c) above may be met in whole or in part through program completion as follows:

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

(4) Group programs based on specific instructional objectives shall be approved in the same manner as other approved courses. Individual programs shall be on file in the local district and subject to review by the [commissioner] **Commissioner** or his or her designee.

3. (No change.)

(e) Successful completion of the requirements set forth in (b), (c), and (d) above and any local requirements shall be required as conditions for awarding a State-endorsed diploma, except as provided for seniors entering military or naval service, pursuant to N.J.S.A. 18A:36-17, and handicapped pupils exempted from the requirements. No district board of education may issue a high school diploma without State endorsement.

(f) Review and reporting [rules] **requirements** include the following:

1.-2. (No change.)

3. District boards of education shall submit their graduation requirements on forms provided by the [State] Department of Education to the [commissioner] **Commissioner** or his or her designee. District boards of education shall update this filed copy as their graduation policies are revised;

4. The Commissioner [of Education] or his or her designee shall review and approve the district board of education policies and procedures for pupil promotion, remediation, and high school graduation requirements;

5. The Commissioner [of Education] or his or her designee shall monitor the implementation of the promotion, remediation, and high school graduation policies and procedures; and

6. From time to time, but at least once every five years, the State Board of Education and district boards of education shall review and update their promotion and graduation requirement policies, as a result of the State and local goal review processes noted in N.J.S.A. 18A:7A-8 and N.J.A.C. 6:8-2.3 and 6:8-4.3(a)1i.

#### 6:39-1.1 Authority of the Commissioner

(a) (No change.)

(b) All such means, tests, if determined to be appropriate by the [commissioner] **Commissioner**, and examinations to be administered pursuant to this [rule] **section** shall be conducted by and in all operating school districts in New Jersey and shall meet the State criteria.

(c) School districts shall conduct such means, tests, and examinations in the manner and at the times prescribed by the [commissioner] **Commissioner**.

(d) School districts shall report to the Department of Education the results of such means, tests, and examinations in the manner and at the time prescribed by the [commissioner] **Commissioner**.

#### 6:39-1.2 [Levels of pupil proficiency] **Basic skills proficiency in reading, writing and mathematics (HSPT)**

(a) **The State Board of Education, after consultation with the [commissioner] Commissioner** shall establish uniform Statewide levels of pupil proficiency in reading, writing and mathematics skills on the Statewide assessment instruments pursuant to N.J.S.A. 18A:7A-6.

(b) In the event that certain grades are not administered the [statewide] Statewide assessment instruments, the Department of Education shall establish, for those grades, equivalent standards of pupil proficiency on tests which measure performance in reading, writing and mathematics skills and meet State criteria.

(c) All pupils performing below the established levels of pupil proficiency in reading, writing and mathematics skills, as determined by [under N.J.A.C. 6:39-1.2](a) and (b) **above**, shall be provided appropriate instructional services according to the district's basic skills improvement plan, pursuant to N.J.S.A. 18A:7A-6.

1. A waiver of this requirement may be granted if the program of needs assessment conducted pursuant to N.J.A.C. 6:8-7.1(b)4 clearly demonstrates such enrollment is unnecessary or if enrollment of a pupil above the levels of pupil proficiency as established in (a) and (b) **above** is necessary.

#### 6:39-1.3 Core course proficiencies assessment

(a) **The Department of Education shall assess the core course proficiencies established in N.J.A.C. 6:8-7.1(c)2ii. The assessment shall occur using Statewide tests in the following areas and according to the schedule of administration specified below:**

1. **Mathematics courses, with tests to be administered in 1992 and reoccur once every four years thereafter;**

2. **Science courses, with tests to be administered in 1993 and reoccur once every four years thereafter;**

3. **English courses, with tests to be administered in 1994 and reoccur once every four years thereafter; and**

4. **Social studies courses, with tests to be administered in 1995 and reoccur once every four years thereafter.**

(b) **The specific methods and standards for annually assessing student mastery of course proficiencies, as mandated by N.J.A.C. 6:8-7.1(c), shall be the responsibility of each local school district.**

(c) **The Department of Education shall assist school districts in identifying and/or developing school district assessment techniques and instruments through curriculum panels, prepared assessment material, and regional training activities. The Department shall also identify those school districts that have effective assessment programs which can serve as models.**

(d) **The Statewide tests will be reviewed as part of the process required in N.J.A.C. 6:8-7.1(c).**

(e) **An educationally handicapped pupil must meet all State and local high school graduation requirements in order to receive a State-endorsed high school diploma pursuant to the provisions established under N.J.A.C. 6:28.**

#### 6:39-[1.3]1.4 Dissemination of information

(a) **Dissemination of information procedures relative to basic skills proficiency in reading, writing, and mathematics as measured by the High School Proficiency Test (HSPT) shall be as follows:**

[(a)] 1. **Notwithstanding the provisions of N.J.A.C. 6:3-2, individual pupil data shall be released only to a pupil, his or her parent or legal guardian, and school personnel and school officials deemed appropriate by the [commissioner] Commissioner.**

[(b)] 2. **The [State] Department of Education shall produce and distribute to chief school administrators as uninterpreted reports for tests developed by the Department[;], rosters of pupil performance and other reports as deemed appropriate by the [commissioner] Commissioner.**

3. **Rosters of pupil performance for tests developed by the Department of Education shall be distributed to chief school administrators, as indicated in (a)2 above, in such a manner as to provide a 30-day interpretation period prior to reporting to the district board of education and to the public. Following this 30-day period, the Commissioner shall make available to the public reports about each district which at a minimum shall list the number of pupils tested and percentage of pupils at or above the established levels of pupil proficiency:**

i. **By grade and by test for tests developed by the Department; and**

ii. **By grade, for certain other tests administered by each district, as deemed appropriate by the Commissioner.**

[(c)] 4. **The [State] Department of Education shall provide an interpreted State report to the State Board [and the Commissioner] of Education.**

5. **At the time the Commissioner makes available to the public the information stated in (a)3 above, all districts shall make available to the public the number of pupils tested and the percentage of pupils at or above the established levels of pupil proficiency for each school and for the district, by grade and by test.**

[(d)] 6. **Summary reports for the class(es), school(s), and district shall be distributed to chief school administrators, as indicated in [(b)] (a)2 above, in such a manner as to provide a 45-day period from receipt of all reports for the analysis of data. During this period, such material shall not be available for public distribution.**

[(e)] 7. **Upon completion of the analysis, as indicated in [(d)] (a) 6 above, but in no case later than the 45-day period established by the [commissioner] Commissioner, and upon approval by the district board of education, summary reports for class(es), school(s), and district shall be made available to the public.**

[(f)] 8. Individual pupil reports for tests developed by the Department of Education shall be returned to districts in duplicate for all pupils tested. One copy of the report shall be maintained with the pupil's permanent records, and one copy shall be made available to the pupil[,] and his or her parent or legal guardian in a timely fashion.

[(g)] Rosters of pupil performance for tests developed by the Department shall be distributed to chief school administrators as indicated in (b) above in such a manner as to provide a 30-day interpretation period prior to reporting to the district board of education and the public. Following this 30-day period, the commissioner shall make available to the public reports about each district which at a minimum shall list the number of pupils tested and percent of pupils at or above the established levels of pupil proficiency, by grade and by test for tests developed by the Department and for certain other grades as deemed appropriate by the commissioner on tests administered by each district.

(h) At the time the commissioner makes available to the public the information stated in (g) above, all districts shall make available to the public the number of pupils tested and the percent of pupils at or above the established levels of pupil proficiency for each school and the district, by grade and by test.]

[(i)] 9. The [commissioner] **Commissioner** may make exceptions to the above [rules] paragraphs, such as those required by the provisions of the Public School Education Act of 1975 [(], N.J.S.A. 18A:7A-1 et seq.[)], as well as special reports requested by [local] school districts.

(b) **Dissemination of information procedures relative to the State-wide tests of the core course proficiencies identified in N.J.A.C. 6:39-1.3 (a) shall be as follows:**

1. **Notwithstanding the provisions of N.J.A.C. 6:3-2, individual pupil data shall be released to the pupil, his or her parent(s) or legal guardian, and school personnel and school officials deemed appropriate by the Commissioner.**

2. **For those tests developed by the Department of Education, the Department shall provide the chief school administrators with reports of test results. Such reports may include rosters of pupil performance and other reports as deemed appropriate by the Commissioner.**

3. **The Statewide core course tests results shall be returned to the school district by September 1. The Commissioner shall make a public report of the test results by November 1. The report shall include Statewide, school district, and school data.**

4. **The Department of Education shall provide an interpreted State report to the State Board of Education.**

5. **All analyses, reports, and assessment compilations for course proficiencies which do not contain personal and identifiable education information shall be considered a public record and shall be made available to the general public upon request.**

6. **The Commissioner may make exceptions to the above rules, such as those required by the provisions of the Public School Education Act of 1975, N.J.S.A. 18A:7A-1 et seq., as well as special reports requested by school districts.**

6:39-[1.4]1.5 Interpretation of data

(a) The [State] Department of Education will provide technical assistance in the development of essential interpretative material by local districts.

(b) The [State] Department of Education may provide interpretations for local, county and State use.

(c) (No change.)

6:39-1.6 Recognition of excellence

**District boards of education shall be encouraged to develop programs which give recognition to students who achieve academic excellence in the course proficiencies.**

6:39-[1.5]1.7 Exclusion of pupils

[(a)] Any pupil who has been classified as handicapped, pursuant to N.J.S.A. 18A:46-1 et seq., shall participate in the testing program unless specific exemption from participating in this program is provided within that pupil's Individualized Education Program (N.J.A.C. 6:28). A handicapped pupil shall be exempted if:

1. The pupil would be adversely affected by taking the test; or
2. The pupil's Individualized Education Program does not include the proficiencies measured by the High School Proficiency tests.]

**An educationally handicapped pupil shall be exempted from the High School Proficiency Test and core course proficiencies tests pursuant to the provisions established under N.J.A.C. 6:28.**

(a)

**STATE BOARD OF EDUCATION**

**Special Education**

**Proposed Readoption with Amendments: N.J.A.C. 6:28**

Authorized By: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Authority: N.J.S.A. 18A:4-15, 18A:7A-1 et seq., 18A:7B-1 et seq., 18A:7C-1 et seq., 18A:40-4, 18A:46-1 et seq., 18A:46A et seq., 18A:48-8, 39:1-1, U.S.P.L. 93-112, Sec. 504, 94-142 and 99-457.

Proposal Number: PRN 1989-69.

Submit comments by March 8, 1989 to:

Irene Nigro, Rules Analyst  
N.J. Department of Education  
225 West State Street, CN 500  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Pursuant to Executive Order No.66 (1978), N.J.A.C. 6:28, Special Education, is due to expire on June 1, 1989. Therefore, the Department of Education is proposing readoption of these rules with amendments. The proposed changes are necessary to clarify certain rules to comply with Federal regulations and to ensure a match between Department procedures and regulatory language.

A review of the subchapters follows.

**N.J.A.C. 6:28-1 General Provisions**

This subchapter includes the general requirements which apply to all publicly funded programs for educationally handicapped pupils. Also described are both the process and content for special education plans to be submitted by every public and private provider of special education to the Department of Education. Definitions are provided in this subchapter in order to allow readers to understand the text. New definitions are proposed to clarify the following words and terms: adult pupil, approved private school for the handicapped, consent and "age three". New rules are proposed to clarify the Federal requirements for local district board of education policies and procedures.

New language clarifies that the standard of service that a child in New Jersey is ensured is a free, appropriate public education; the same standard guaranteed by The Education for All Handicapped Children Act (20 U.S.C. 1400 et seq.). This clarification is necessary due to the decision in Board of Education of *East Windsor Regional School District v. Diamond*, 808 F.2d 987 (3rd Cir. 1986) in which the Federal appeals court stated that the New Jersey standard was higher than that required under The Education for All Handicapped Children Act. This also makes it clear that where New Jersey requires the provision of services for pupils for whom services are not mandated under the Federal Act, the standards for provision of services is still defined as the provision of a free, appropriate public education under Federal law. The proposed rules clarify that the standard under both New Jersey law and The Education for All Handicapped Children Act are the same.

**N.J.A.C. 6:28-2 Procedural Safeguards**

This subchapter describes all of the rights and protections available to parents and school districts to assure the provision of appropriate services and programs to educationally handicapped pupils.

This subchapter contains all of the procedural safeguards including proper management of disciplinary action involving handicapped pupils, parental notice, consent and participation, native language requirements, protection in evaluation procedures, pupil records and due process hearings. New rules provide that mediation will be conducted by local districts, the county office of education and the Department of Education. Due process procedures have been redesigned to emphasize the voluntary

nature of mediation and the provision of timely due process hearings. A 1988 United States Supreme Court decision (*Honig v. Doe*) regarding discipline has been complied with in the proposed amendments by setting a maximum number of days an educationally handicapped pupil may be suspended for behavior which is the result of his or her educational handicap or an inappropriate educational program.

The rights of adult pupils have been clarified with proposed rules which state when notice, consent and participation shall occur. The section addressing pupil records is revised to eliminate repetition with N.J.A.C. 6:3-2 N.J.A.C. 6:28-2.10 has been added to group all of the Federal requirements regarding least restrictive environment.

**N.J.A.C. 6:28-3 Services**

This subchapter addresses all requirements regarding the composition and responsibilities of the child study team: the identification, evaluation, determination of eligibility, development of individualized education programs (IEPs) and provision of related services for educationally handicapped pupils. New rules are proposed to simplify IEPs, clarify reevaluation requirements and to include consideration for transition planning for educationally handicapped pupils exiting their educational program.

**N.J.A.C. 6:28-4 Programs**

This subchapter describes the requirements for placement of pupils and provision of varieties of instructional programs. Proposed rules clarify the delivery of instruction in resource rooms. N.J.A.C. 6:28-4.2 has been reorganized without substantive change to improve its readability. New rules for class size in vocational programs and the provision of programs in vocational rehabilitation facilities are proposed. Also added to the rules are changes to home instruction programs for pupils confined to medical institutions. Rules for exceptions to program placement are revised to comply with Federal regulations.

**N.J.A.C. 6:28-5 Approved Clinics and Agencies**

General requirements for the establishment and ongoing approval of clinics and agencies eligible to provide services to the public schools are included in this subchapter. No substantive changes have been proposed to this subchapter.

**N.J.A.C. 6:28-6 Services for Nonpublic School Pupils**

This subchapter contains the rules for provision of services for non-public school pupils pursuant to P.L. 1977 c. 192 and c. 193. N.J.A.C. 6:28-6.2 has been moved to the definition section of subchapter 1. No substantive changes have been proposed to this subchapter.

**N.J.A.C. 6:28-7 Programs by Educational Services Commissions, Jointure Commissions, Regional Day Schools, County Special Services School Districts, the Marie H. Katzenbach School for the Deaf, Private Schools for the Handicapped and Public College-Operated Programs for the Handicapped**

This subchapter describes the general requirements, approval procedures and provisions for providing programs in the listed settings. Major changes to this subchapter for approved private schools for the handicapped include the addition of requirements for residential and out-of-State programs, annual approval procedures and monitoring and corrective action. Approval of public college-operated programs has been moved from subchapter 8 to this subchapter to ensure consistency in the monitoring of these programs.

**N.J.A.C. 6:28-8 Programs Operated by the Departments of Corrections and Human Services**

This subchapter has been substantially revised to conform to current Department approval and monitoring policies and procedures for State-operated facilities.

**N.J.A.C. 6:28-9 Monitoring, Corrective Action and Complaint Investigation**

This subchapter covers the procedures that will be used by the Department of Education to investigate substantiated complaints regarding special education programs and services, to monitor these programs and services, and to initiate corrective action. Complaint investigation procedures have been revised to correctly reflect the department's process.

**N.J.A.C. 6:28-10 Early Intervention Programs**

This subchapter describes the general requirements for funding early intervention programs for handicapped children from birth through age three. It has been simplified to correctly reflect the Department of Education's funding requirements and to comply with P.L. 99-457.

**N.J.A.C. 6:28-11 Pilot Rules and Regulations**

This subchapter was adopted in 1987 and applies only to 10 selected pilot projects in the State of New Jersey. Minor changes to these rules are proposed only to ensure consistency with the language in other subchapters.

**Social Impact**

The proposed amendments are designed to continue the quality of services to special education pupils. Similar rules have existed in New Jersey since the 1960s. The quality and quantity of special education programs and the number of handicapped children served since the 1960s has dramatically increased due to the public support of special education. Public advocacy groups were largely responsible for effecting legislation for the handicapped. There is large scale support for programs from a variety of sources including legislators and parents who are accustomed to the level of services being offered today and want to maintain and improve quality programs.

Using the Federal count of December 1 each year, the growth in the number of handicapped pupils from 1983, the year prior to the adoption of the existing rules, to 1987 is as follows:

<b>1983</b>	<b>1987</b>
159,506	167,326

**Economic Impact**

The amended rules will not have a significant economic impact that would increase State or local expenditures. A schedule of State categorical aid for educating handicapped pupils from 1983 to 1987 is listed below.

<b>Fiscal Year</b>	<b>State Aid Appropriated</b>
1983	\$165,772,000
1984	\$191,674,000
1985	\$206,076,000
1986	\$228,326,000
1987	\$250,684,000

**Regulatory Flexibility Statement**

The rules proposed for re adoption, with amendments, will have no reporting, recording or compliance requirements for small business except for private schools for the handicapped and clinics and agencies. The rules change existing reporting, recording or compliance requirements for private schools or clinics and agencies, only in that they are reflective of what is now required in Division of Special Education approval process procedures.

As the result of public testimony received from the Association of Schools and Agencies for the Handicapped, several reporting, recording and compliance requirements were reduced or deleted. In N.J.A.C. 6:28-7.2(a), the requirement that a six month prior notification to establish or change a program was deleted. This will provide private schools with more time to submit an application. In N.J.A.C. 6:28-7.5(d), the requirement was reduced from reporting all program changes to the Department of Education to only reporting when ceasing operation. This will reduce the reporting requirements to allow more flexibility in program development.

To assure consistency in the monitoring of approved private schools with procedures for local districts, a change was made to reduce monitoring to once every five years rather than the current three year cycle. This will make compliance activities less frequent.

Proposed amendments for approved private schools were developed to parallel public school requirements. This is necessary since the educationally handicapped pupils placed in these programs are public school pupils and the responsibility of the districts. These programs are funded by public tax dollars.

Reporting, recording and compliance requirements are consistent with public school requirements and are not more burdensome on approved private schools for the handicapped.

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

**CHAPTER 28  
SPECIAL EDUCATION**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**6:28-1.1 General requirements**

- (a) (No change.)
- (b) The purpose of [these rules] this chapter is to:

1. Ensure that all educationally handicapped pupils, as defined herein, have available to them a free, appropriate public education [which includes special education and/or related services:] as that standard is set under the Education for All Handicapped Children Act (20 U.S.C. 1400 et seq.);

2. Ensure the provision of special education and/or related services;

[2.]3. Ensure that the rights of educationally handicapped pupils and their parents are protected;

[3.]4. Assist public and private agencies providing educational services to educationally handicapped pupils; and

[4.]5. Ensure the evaluation of the effectiveness of the education [for] of these pupils.

(c) The rules in this chapter shall apply to all public and private agencies providing publicly funded educational programs and services to educationally handicapped pupils.

1. Programs and services shall be provided to pupils [between] ages three [and] through 21.

2. Programs and services may be provided by a district board of education at their option to pupils below the age of three and above the age of 21.

3. Each district board of education [also] shall provide information regarding services available through other State, county and local agencies to parents of handicapped children below the age of three.

(d) Each district board of education is responsible for providing a system of free, appropriate special education and/or related services to its elementary and secondary school pupils which shall:

1. Be provided at public expense, under public supervision[,] and with no charge to the parent(s);

[2. Include preschool, elementary school and/or secondary school programs;]

[3.]2. Be administered, supervised and provided by appropriately certified professional staff members;

[4.]3. Be located in State approved facilities that are accessible to the handicapped; and

[5.]4. Meet all requirements of this chapter.

(e) Each district board of education is responsible for providing a system of free, appropriate special education and related services to its preschool pupils which shall:

1. Be provided at public expense, under public supervision and with no charge to the parent(s);

2. Be administered, supervised and provided by appropriately certified professional staff members;

3. Be located in facilities which are approved by the State according to N.J.A.C. 6:22-1 and accessible to the handicapped; and

4. Meet all requirements of this chapter.

[(e)](f) Each district board of education, independently or through joint agreements, shall employ child study teams, speech correctionists or speech-language specialists and other school personnel in numbers sufficient to ensure provision of required programs and services pursuant to this chapter.

[(f)](g) When a district board of education provides its educational programs through another New Jersey public school district, responsibility for the requirements of this chapter shall be according to the following:

1. In a [formal] sending-receiving relationship, when all the pupils of at least one grade of a district board of education attend school(s) operated by [an]other district boards of education, the receiving [school] district board of education shall be responsible for determining the pupil's eligibility and developing and implementing the individualized education program.

2. [In sending-receiving relationships, when less than all the pupils of a district board of education attend] When individual pupils are placed in a school[s] operated by another district board of education, a contractual agreement shall be made between district boards of education which specifies responsibility for providing instruction, related services and child study team services to educationally handicapped pupils.

[(g)](h) Each district board of education shall ensure that special classes, separate schooling or other removal of educationally handicapped pupils from the regular educational environment occurs only

when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(i) All educationally handicapped pupils shall be placed in facilities or programs which have been approved by the Department of Education according to N.J.S.A. 18A:46-14 and 15.

(j) Each district board of education shall ensure that placement of educationally handicapped pupils is based on their individualized education programs.

(k) Each district board of education shall ensure that the hearing aids worn by deaf and/or hard of hearing children in school are functioning properly.

[(h)] All public and private agencies which provide educational programs and services to handicapped pupils shall establish written policies regarding the compilation, maintenance, access to and confidentiality of pupil records according to N.J.A.C. 6:3-2.]

[(i)](l) All special education programs and [related] services provided under this chapter shall be subject to review and approval by the Department of Education.

[(j)](m) All public and private agencies which provide educational programs and services to educationally handicapped pupils shall maintain documentation [of] demonstrating compliance with this chapter.

(n) Each district board of education shall provide mandated pupil records according to N.J.A.C. 6:3-2 to programs operated by the Departments of Human Services or Corrections when a pupil is placed in a State facility. The parent or adult pupil shall receive notice of release of these records to the facility. Permitted records according to N.J.A.C. 6:3-2 may be released only with consent.

6:28-1.2 Plans for special education

(a) Each district board of education, jointure commission, county special services school district, educational services commission, approved private school and State-operated program for the educationally handicapped shall develop a written plan for special education. The plan shall [be in] conform[ance] with the State plan for the educationally handicapped. Plans for special education shall be submitted for approval to the Department of Education through its county offices as set forth in this section [for a period not to exceed three years.] in three parts.

(b) The development of the plan for special education shall [include] provide reasonable opportunities for the participation of professional staff [serving the district], parents, community members, [and] handicapped individuals and groups representing the handicapped population. [The] Parts one and three of the written plan shall be presented at a public meeting prior to approval by the district board of education or governing board. Copies of the plan shall be made available upon request.

(c) If there are any changes to parts one or three of the plan they shall be prepared in accordance with the requirements of this section.

[(c)](d) [The] Part one of the plan shall be submitted for a period not to exceed three years and shall include:

[1. The special education needs, goals, objectives and plan of action of the district;

2. A tabulation of the numbers of educationally handicapped pupils according to their classifications and types of programs served in public school programs, in State facilities and through programs and services for nonpublic school pupils;

3. A tabulation of the professional staff employed to identify, evaluate, determine eligibility, develop individualized education programs, provide related services and instruct educationally handicapped pupils and the full-time equivalence of their assignments;

4. A description of the procedure used to identify, screen and refer potentially handicapped pupils (see N.J.A.C. 6:28-3.2, 3.3);

5. A description of the process by which the district provides the full range of special education programs and services (see N.J.A.C. 6:28-3.1 through 4.4);

6. An assurance that an appropriate individualized education program is being implemented for each educationally handicapped pupil (see N.J.A.C. 6:28-4.1);

7. The criteria and process used to evaluate the district special education programs and services (see N.J.A.C. 6:28-4.1);

8. The administrative review process used by the district to settle parental disputes (see N.J.A.C. 6:28-2.6);

9. A district-wide comprehensive system of personnel development which includes:

- i. A needs assessment procedure;
  - ii. The annually established plans to meet these needs;
  - iii. The personnel development completed during the past year; and
  - iv. The description of the procedures used to evaluate training.
10. An assurance that pupil records are maintained according to N.J.A.C. 6:3-2;

11. An assurance that the plan has been prepared according to the paragraphs above.]

- 1. A description of the needs assessment procedures used to determine special education and related services program needs;
- 2. A list of the identified needs;
- 3. The goals and objectives selected to address the identified needs;
- 4. The activities planned to attain those goals and objectives; and
- 5. The procedures to be used to evaluate the operation and effectiveness of these activities.

(e) Part two of the plan shall be submitted annually and shall include:

1. A report of the numbers of educationally handicapped pupils according to their classification, age, racial-ethnic background, sex, placement and related services;

2. A report of the staff employed to identify, evaluate, determine eligibility, develop individualized education programs, provide related services and/or instruction to educationally handicapped pupils and the full-time equivalence of their assignments;

3. A report of the projected staff needed in the following school year; and

4. Assurances that the district board of education:

i. Complies with N.J.A.C. 6:28;

ii. Develops and adopts written policies and procedures according to N.J.A.C. 6:28-1.4;

iii. Implements the plan;

iv. Prepares the plan according to the requirements of this subchapter; and

v. Implements effective procedures for acquiring and disseminating to teachers and administrators participating in each program, significant information from educational research, demonstrations, and similar projects and adopting, when appropriate, sound educational practices developed through these projects.

(f) Part three of the plan, a district-wide comprehensive system of personnel development, shall be submitted every three years with the exception of (f) 1 below which shall be submitted annually and shall include:

1. A description of the personnel development completed during the previous year;

2. A description of the procedures used to determine personnel development needs, as well as the results of the procedures;

3. A description of the activities established to meet the identified needs; and

4. A description of the methods and procedures used to evaluate the operation and effectiveness of the personnel development activities.

[(d) Annually the district board of education shall submit assurances that paragraphs 1, 4, 5, 6, 7, 8, 9, 10 and 11 of (c) above continue to be applicable. If modifications have been made to any of those paragraphs, the district shall submit the new material and the annual assurance for these changes to the Department of Education through its county office.

(e) Annually the district board of education shall update and submit (c)2, (c)3, and (c)9 ii., iii. above to the Department of Education through its county office.]

[(f)](g) Upon request, additional reports shall be [made available] submitted to the Department of Education including, but not limited to, the numbers of educationally handicapped pupils exiting education, referred, classified, evaluated and receiving home instruction.

6:28-1.3 Definitions

[The following w]Words and terms, unless otherwise stated in these definitions, when used in this chapter, shall [have the following mean-

ings unless the context clearly indicates otherwise.] be defined in the same manner as those words and terms used in the Education for All Handicapped Children Act.

...  
 "Adult pupil" means an emancipated minor or a person age 18 through 21, who is or was enrolled in the public school and who is not under legal guardianship.

"Approved private school for the handicapped" means an incorporated entity approved by the Department of Education according to N.J.A.C. 6:28-7.2 or 7.3 to provide special education and related services to educationally handicapped pupils placed by the district board of education responsible for providing their education.

"Consent" means that the parent(s) or adult pupil has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication; understands and agrees in writing to the implementation of this activity; and understands that the granting of consent is voluntary and may be revoked at any time.

"Department of Education" means the State Board of Education, the Commissioner of Education or its/his/her designee.

...  
 "Individualized education program" means a written plan developed at a meeting according to N.J.A.C. 6:28-3.6 [written jointly by the school personnel and parent(s). This plan] which sets forth goals and measurable objectives and describes an integrated, sequential program of individually designed educational activities and/or related services necessary to achieve the stated goals and objectives. This plan shall establish[es] the rationale for the pupil's educational placement, serve[s] as the basis for program implementation and [shall] comply with the mandates set forth in this chapter.

["Least restrictive environment" means a setting which is as similar as possible to the regular setting in which the pupil would be educated if not considered handicapped. Such a setting is selected in light of a pupil's special education needs.]

...  
 "Nonpublic school" means an elementary or secondary school, other than a public school, within the State, providing education in grades kindergarten through 12, or any combination of grades, in which a pupil age five through 20 may fulfill compulsory school attendance and which complies with Title VI of the Civil Rights Act of 1964 (P.L. 88-352).

"Nonpublic school pupil" means any pupil who is enrolled full time in a nonpublic school. A pupil who boards at a nonpublic school shall be considered a resident of the New Jersey district in which the parent(s) resides.

"Parent(s)" means the natural parent(s); [or], the legal guardian(s), foster parent(s), surrogate parent(s) [or], person acting in the place of a parent such as the person with whom the pupil legally resides and/or a person legally responsible for the pupil's welfare. [Where parents are separated or divorced, parent means the person(s) who has legal custody of the pupil.] Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent(s) retains all rights under this chapter.

["Parental consent" means a written agreement of a parent(s) to a specific action regarding the provision of special education and/or related services.]

["Preschool" means between the ages of three and five.]

"Pupil" means a person age three through 21 who is or was enrolled in a public school.

"Pupil age" means the school age of a pupil as defined by the following:

- 1. "Age three" means [the attainment of age three by the month and day established as the kindergarten entrance cut off date by the district board of education.] the attainment of chronological age three by December 31 of that school year. Children attaining age three by that date shall be considered age three on July 1 of that school year. Children enrolled in early intervention programs according to N.J.A.C. 6:28-10 attaining the chronological age of three during the school year but after December 31 shall continue to be provided [required] services for the balance of that school year by those programs.

2. "Age five" means the attainment of age five by the month and day established as the kindergarten entrance cut off date by the district board of education. Educationally handicapped pupils attaining age five during the school year shall **continue** to be provided [required] preschool services for the balance of that school year.

3. "Age 21" means the attainment of the twenty-first birthday [before July 1] **by June 30 of that school year**. Educationally handicapped pupils attaining age 21 during the school year shall **continue** to be provided [required] services for the balance of that school year.

"Referral" means [the] making [of] a written request that a child study team [conduct] **meet to determine the need for** an evaluation. Referral does not include informal reviews or consultations by child study team members or assessments by teachers] **according to N.J.A.C. 6:28-3.3**.

"Related services" for educationally handicapped pupils means counseling for pupils, counseling and/or training for parents relative to the education of a pupil, speech [correction]-**language services**, recreation, occupational therapy, physical therapy, transportation, as well as any other appropriate developmental, corrective and supportive services required for a pupil to benefit from education [and] as [indicated in] **required by** the pupil's individualized education program.

"Special education" means specially designed instruction to meet the educational needs of **educationally** handicapped pupils including, but not limited to, subject matter instruction, physical education and vocational training.

#### 6:28-1.4 District board of education policies and procedures

(a) Each district board of education shall develop and adopt written policies and procedures for the following:

1. Exemption of educationally handicapped pupils from the high school graduation requirements according to N.J.A.C. 6:8-7.1(b), 6:28-3.6 and 4.8 and 6:39-1.6;

2. Prevention of needless public labeling of educationally handicapped pupils;

3. Compilation, maintenance, access to and confidentiality of pupil records according to N.J.A.C. 6:3-2;

4. Identification, location and evaluation of potentially educationally handicapped pupils;

5. Provision of full educational opportunity to educationally handicapped pupils;

6. Participation of and consultation with the parent(s) of educationally handicapped pupils toward the goal of providing full educational opportunity to all educationally handicapped pupils ages birth through 21;

7. Provision of special services to enable educationally handicapped pupils to participate in regular educational programs to the maximum extent appropriate;

8. Development and implementation of individualized education programs according to N.J.A.C. 6:28-3.6 and 3.7;

9. Protection of pupils' rights in regard to evaluation and reevaluation procedures according to N.J.A.C. 6:28-2.5;

10. Placement of educationally handicapped pupils in the least restrictive environment according to N.J.A.C. 6:28-1.1(h), 2.1(a), 2.10, 3.6(e)5, and 4.1(i); and

11. Establishment and implementation of procedural safeguards according to N.J.A.C. 6:28-2.3, 2.6, and 2.7.

#### SUBCHAPTER 2. PROCEDURAL SAFEGUARDS

##### 6:28-2.1 General requirements

(a) Each district board of education shall provide a free, appropriate public education program and related services for **educationally** handicapped pupils in the least restrictive environments **according to N.J.A.C. 6:28-1.1(b)1**.

(b) (No change.)

(c) After [a pupil has been identified as potentially handicapped and] parental consent for initial evaluation has been received, the district board of education shall **ensure that** within 90 calendar days [evaluate, determine] **evaluation and determination of eligibility[,] for**

**special education and/or related services, and, if eligible, development and implementation of the basic plan section of the individualized education program for the pupil shall be completed.** Within the 90 calendar days, no more than 30 calendar days shall elapse between the development and the implementation of the basic plan section of the individualized education program.

(d) Whenever [a district board of education requests] parental consent for initial evaluation is requested, a parent(s) identifies to the district board of education a child age three to five as potentially preschool handicapped or [sends] a notice is sent to the parent(s) to reevaluate, the parent(s) shall receive a copy of [their] the procedural safeguard rights under this subchapter and N.J.A.C. 1:6A.

(e) Upon determination of a pupil's eligibility for special education and/or related services, **by the child study team, the parent(s) or adult pupil** shall receive a copy of this chapter.

(f) Upon [receipt of] parental request[s], each district board of education shall provide copies of special education [law] **statutes** (N.J.S.A. 18A:46-1 et seq., special education rules (N.J.A.C. 6:28), pupil records rules (N.J.A.C. 6:3.2), **information regarding the availability of free and low cost legal or other services relevant to a due process hearing** and due process rules (N.J.A.C. 1:6A).

(g) Each district board of education shall develop a written policy to prevent the needless public labeling of educationally handicapped pupils.

(h) Pending the outcome of a conflict resolution effort or due process hearing according to this subchapter, no change shall be made to a pupil's classification, program or placement unless emergency relief is granted by the Office of Administrative Law according to N.J.A.C. 6:28-2.7.]

(g) If the mediation according to N.J.A.C. 6:28-2.6 or due process hearing according to N.J.A.C. 6:28-2.7 involves initial admission to the public school of a child age five through 21, the child, with the consent of the parent(s), shall be placed in the public school program or a placement agreed to by the parent(s) and district board of education pending the outcome of the hearing.

##### 6:28-2.2 Surrogate parents

(a) Each district board of education or responsible State agency shall ensure that the rights of a pupil are protected through the provision of [a] **an individual to act as surrogate for the parent** [who shall] and assume all parental rights under this chapter, when either:

1. The parent cannot be identified according to N.J.A.C. 6:28-1.3;

[1.] 2. The parent(s) cannot be located after reasonable efforts; or

[2.] 3. The pupil is a ward of the State of New Jersey.

(b) Each district board of education or responsible State agency shall establish a method for selecting and training surrogate parents.

(c) The person serving as a surrogate parent shall have:

1. No interest that conflicts with those of the pupil he or she represents; and

2. Knowledge and skills that ensure adequate representation of the pupil.

(d) The person(s) serving as a surrogate parent may not otherwise be an employee of the local school district or responsible State agency. A surrogate parent may be paid solely to act in that capacity.

##### 6:28-2.3 Parental notice, consent, [and] participation and meetings

(a) Written notice which meets the requirements of this section shall be provided to [a] the parent(s) when a district board of education:

[1. Requests parental consent to refer a pupil to the child study team or for initial implementation of a special education program and/or related services;

2. Schedules a conference to determine a pupil's eligibility for special education and/or related services or schedules a conference to develop an individualized education program. Such notice shall be provided at least 15 calendar days prior to the proposed conference unless the parent(s) consents to a shorter time period.

i. Notice regarding an eligibility or individualized education program conference(s) shall indicate the purpose, time, location and participants.

ii. Such conference(s) shall be scheduled at a time and location mutually agreed upon by the parent(s) and district representative.

3. Plans to conduct a reevaluation. Such notice shall be provided at least 15 calendar days prior to the proposed reevaluation.

4. Denies the written request of a parent to initiate or change a special education program or service pursuant to this chapter. Such notice shall be provided within 30 calendar days of receipt of the parental request.]

1. Proposes to initiate or change the classification, evaluation or educational placement of the pupil or the provision of a free, appropriate public education to the pupil;

2. Requests consent to conduct an initial evaluation or for initial implementation of a special education program and/or related services;

3. Schedules a meeting to determine a pupil's eligibility for special education and/or related services or to develop an individualized education program;

4. Plans to conduct a reevaluation; or

5. Approves or denies the written request of the parent(s) to initiate or change the classification, evaluation or educational placement of the pupil or the provision of a free, appropriate public education to the pupil.

[(b) Each notice shall be clearly written and shall include:

1. A description of the action proposed or denied by the district board of education including:

i. An explanation of why it is taking such action;

ii. A description of any options the district board of education considered and the reasons why those options were rejected;

2. A description of the procedures and factors used by the district board of education in determining whether to propose or deny an action;

3. A full explanation of the parental rights to appeal and the process for appealing a district board of education's proposal or denial of an action according to N.J.A.C. 6:28-2.7 and N.J.A.C. 1:6A.]

(b) Written notice, according to (a)1 through 5 above, shall be provided to the parent(s) no later than 15 calendar days after making a determination and in no event less than 15 calendar days prior to the date for implementation, unless the parent(s) otherwise consents. If the parent(s) consents to implementation before the 15 days have elapsed, documentation of such consent shall be maintained.

[(c) A district board of education shall take steps to ensure that the parent(s) participate in:

1. The evaluation of the pupil;

2. The decision to determine the pupil's eligibility for special education and/or related services;

3. The development of an individualized education program according to N.J.A.C. 6:28-3.6.]

(c) On receipt of any written parental request, written notice shall be provided to the parent(s) within 30 calendar days.

(d) Each notice shall be written in language understandable to the general public and shall include:

1. A description of the action proposed or denied by the district board of education including:

i. An explanation of why it is taking such action; and

ii. A description of any options the district board of education considered and the reasons why those options were rejected;

2. A description of the procedures, tests, records or reports and factors used by the district board of education in determining whether to propose or deny an action; and

3. A full explanation of the parental rights to appeal and the process of appealing a district board of education's proposal or denial of an action according to N.J.A.C. 6:28-2.7 and N.J.A.C. 1:6A.

(e) A district board of education shall take steps to ensure that the parent(s) is given the opportunity to participate in:

1. Evaluations of the pupil;

2. The determination of the pupil's eligibility for special education and/or related services;

3. The development of an individualized education program according to N.J.A.C. 6:28-3.6; and

4. The annual review.

(f) Meetings shall be conducted to determine eligibility and to develop, review and revise the basic plan of a pupil's individualized education program.

1. Each meeting shall include the following participants:

i. The parent(s);

ii. Teacher(s) having knowledge of the pupil's educational performance;

iii. The pupil, where appropriate;

iv. At least one member of the child study team;

v. Referring certified school personnel, the school principal or designee and other appropriate individuals if they choose to participate; and

vi. A curriculum from the Department of Human Services, for those pupils classified as eligible for day training.

2. Meetings shall be scheduled at a mutually agreed upon time and place.

3. Notice of meetings shall indicate the purpose, time, location and participants.

4. If the parent(s) cannot attend the meeting(s), the chief school administrator or designee shall attempt to ensure parental participation, including the use of individual or conference telephone calls. Documentation shall be maintained of all attempts to secure parental participation.

5. A meeting may be conducted without the parent(s) in attendance if the district board of education is unable to secure the participation of that parent(s).

(g) An adult pupil shall be given notice and participate in meetings according to (a) through (f) above.

(h) When requesting consent to conduct an initial evaluation or for initial implementation of a special education program and/or related services for an adult pupil, consent shall be obtained from the adult pupil and notice shall be provided to the adult pupil and his or her parent(s).

(i) Adult pupils shall be given a copy of this chapter and a copy of N.J.A.C. 1:6A upon attainment of the 18th birthday.

6:28-2.4 Native language

(a) Written notice to the parent(s)[, evaluation of a pupil] and parent conferences required by this chapter shall be conducted in the language used for communication by the parent and pupil unless it is not feasible to do so.

1. (No change.)

2. The determination of the language or mode of communication and a written [justification] rationale for its choice shall be documented in the pupil record.

3. If it is not feasible to translate the individualized education program or eligibility reports into another language or mode of communication, the professional(s) making this decision shall ensure and document that the parent(s) is given an English language copy of the report(s) and appropriate explanation of its contents in the language of the parent.

6:28-2.5 Protection in evaluation procedures

(a) Each district board of education shall ensure that evaluation procedures, including, but not limited to, observations, tests and interviews used to determine eligibility and placement of handicapped pupils [are selected and administered according to the following criteria] shall:

1. [A] Be selected and administered by the appropriate members of a multi-disciplinary team of professionals consisting of members of the child study team, the school physician and where appropriate, other specialists according to N.J.A.C. 6:28-3.5, each employing [several] two or more appropriate evaluation procedures[, shall conduct each initial evaluation and reevaluation]. At least one member of the multi-disciplinary team shall be knowledgeable in the area of the suspected disability;

2. [Evaluation procedures shall be] Be used by personnel certified and trained in the administration and interpretation of such procedures[.];

3. [Evaluation procedures selected shall] Have been validated for the purpose(s) for which they are administered[.];

4. [Evaluation procedures shall] Be selected and administered;

i. So that the pupil's cultural background and language abilities are taken into consideration[.]; and

ii. In the pupil's native language or other mode of communication unless it is clearly not feasible to do so;

5. [Evaluation procedures are] **Be** selected, administered and interpreted so that when a pupil has sensory, manual or communication impairments the results accurately reflect the ability which that procedure purports to measure, rather than the impairment[.];

6. **Be selected and administered so as not to be racially or culturally discriminatory;**

7. **Be conducted on an individual basis;**

8. **Use information from group tests only to supplement individual evaluations;**

9. **Consider the pupil's sociocultural background and adaptive behavior in home, school and community; and**

10. **Result in a written report which shall be dated and signed by the individual who originated the data.**

(b) A parent may request an independent [child study team] evaluation if there is disagreement with the evaluation provided by a district board of education.

1. Such independent [child study team] evaluation(s) shall be provided at no cost to the parent(s) unless the district board of education initiates a due process hearing to show that its evaluation is appropriate and a final determination to that effect is made following the hearing.

2. Any independent [child study team] evaluation purchased at public expense shall [meet the following criteria]:

i. Be conducted according to N.J.A.C. 6:28-3.4; and

ii. Be obtained from another public school district, **Educational Services Commission, Jointure Commission** or a clinic or agency approved under N.J.A.C. 6:28-5.

3. **An independent medical evaluation may be obtained according to N.J.A.C. 6:28-5.1(c)3.**

(c) **Upon receipt of parental request, each district board of education shall provide information about where an independent evaluation may be obtained.**

[3.](d) Any independent evaluation submitted to the district child study team shall be considered in making decisions regarding special education and/or related services.

#### 6:28-2.6 [Conflict resolution efforts] **Mediation**

(a) [Conflict resolution efforts shall include local district administrative review and Department of Education] **When disputes arise under this chapter, mediation shall be available through the local district, the Department of Education through its county office and/or the Department of Education through the Division of Special Education. [mediation and] Mediation shall be provided in accordance with the following:**

1. Attempts to resolve conflicts between [a] the parent(s) and a school district prior to a request for a due process hearing are encouraged; however, a request for [a conflict resolution effort] **mediation** is not a prerequisite to a hearing[.];

2. If either party is unwilling to participate in [a conflict resolution effort] **mediation**, a request for a due process hearing under N.J.A.C. 6:28-2.7 may be made directly to the Department of Education[.];

[3. Parent(s) or the district board of education may request an administrative review or a mediation conference any time prior to a request for a hearing.]

[4.3. Either party may be accompanied and advised at [an administrative review and/or] mediation [conference] by legal counsel or other person(s) with special knowledge or training with respect to educationally handicapped pupil needs[.]; and

[5. If the conflict resolution effort is successful, the conclusions shall be incorporated into a written agreement, signed by each party.]

[(b) Attempts to resolve conflicts through an administrative review by the local district shall be provided as follows:]

[1.4. Each district board of education shall establish a[n administrative review] **mediation** procedure consistent with [the following] **this section.**

[2. Within 20 calendar days after a written request for an administrative review is received, the responsible agent of the district shall conduct an administrative review which shall be:

i. Informal;

ii. Held at a time and place convenient to the parties in the dispute.]

[(c) Attempts to resolve conflicts through mediation by the Department of Education] (b) **Mediation** shall be provided as follows:

1. A request for mediation shall be made in writing to the **superintendent of the local district, Child Study Supervisor of the Department of Education county office or the Director of the Division of Special Education**, Department of Education with a copy to the other party. **The mediation request shall specify the issue(s) in dispute and the relief sought;**

2. [The Department of Education through its county office shall provide a] A mediation conference **shall be conducted** within 20 calendar days after receipt of a written request at which time:

i. Issues shall be determined;

ii. Options explored; and

iii. [Conflict resolution] **Mediation** attempts made within the confines of New Jersey law and code[.];

3. The role of the [Department of Education in mediation] **mediator is not judgmental[.];**

4. **The mediation conference shall be:**

i. Informal; and

ii. **Held at a time and place reasonably convenient to the parties in the dispute;**

5. **If the mediation results in agreement, the conclusions shall be incorporated into a written agreement and signed by each party. If the mediation does not result in agreement, the mediator shall document the date and the participants at the meeting. No other record of the mediation shall be made;**

6. The mediator may terminate the mediation after at least one meeting if in his or her judgment the parties are not making progress toward resolving the issue(s) in dispute; and

7. Pending the outcome of mediation, no change shall be made to a pupil's classification, program or placement, unless both parties agree or emergency relief is granted by the Office of Administrative Law according to N.J.A.C. 6:28-2.7(c).

#### 6:28-2.7 Due process hearings

(a) [The parent(s) may request a hearing after receiving a written notice of proposed or denied action or after 30 calendar days have elapsed from the date of the parent's written request for an action under this chapter.] **A due process hearing may be requested in regard to the referral, classification, evaluation or educational placement of a pupil age three through 21 and/or the provision of a free, appropriate public education to that pupil. For pupils below the age of three and above the age of 21, any disputes regarding the provision of programs and services to these pupils shall be handled as a contested case before the Commissioner of Education pursuant to N.J.A.C. 6:24.**

(b) **The parent(s) or district board of education may request a hearing after the district board of education has sent written notice of a proposed or denied action or after 30 calendar days have elapsed from the date of a written request by the parent(s) for a change with regard to the pupil.** The district board of education, through its chief school administrator, may request a hearing when it is unable to obtain required parental consent to a proposed action. **The district board of education shall request a due process hearing if it denies the parent(s) request for an independent evaluation.**

1. A request for a due process hearing shall be made in writing to the **Director of the Division of Special Education**, Department of Education with a copy to the other party.

2. The Department of Education shall acknowledge receipt of the request and provide information regarding free and low cost legal services to [both parties] **the parent(s).**

3. [Immediately upon] **Upon** receiving the Department of Education's acknowledgement, the parties shall **begin to exchange relevant records and information according to the time limits in N.J.A.C. 1:6A-3.3.**

4. Within seven calendar days of receipt of the written request, the Department of Education shall conduct a [settlement] conference [as part of the due process hearing].

1. **The purpose of the conference is to assist the parties in defining issues, identifying evidence, exchanging facts, stipulating facts and list-**

ing possible witnesses. Mediation will be available at the conference if both parties agree to participate.

ii. The district board of education shall ensure that the chief school administrator or his or her designee with the authority of the chief school administrator attends the conference.

iii. The conference shall be scheduled at a time and place reasonably convenient to the parties. Participation by the parent(s) is voluntary. Parent(s) may participate through the use of individual or conference calls.

iv. The conference may result in either settlement, withdrawal or transmittal to the Office of Administrative Law according to N.J.A.C. 1:6A.

v. If the conference results in settlement, the settlement shall be written and in compliance with New Jersey statute and rule.

vi. If the conference results in transmittal, the Department of Education representative will prepare a written document at the conference that specifies the issues in dispute, stipulations, evidence list and witness list for each party. This document shall be immediately forwarded to the Office of Administrative Law. A copy of this document and the transmittal form shall be sent to the parties. The Department of Education representative shall telephone the clerk of the Office of Administrative Law and schedule a hearing date which shall be no later than 14 calendar days from the date of the prehearing conference, unless a later date is agreed upon by both parties.

[5. When a hearing has been requested by the district board of education, the parent may request and shall receive a postponement of the settlement conference for up to 15 calendar days.

6. If agreement between the parties is not reached at the settlement conference, the matter is transmitted to the Office of Administrative Law for a hearing according to N.J.A.C. 1:6A.]

[7.](c) The decision of the administrative law judge is final, binding on both parties and to be implemented without undue delay[.], unless stayed according to N.J.A.C. 1:6A-5.4.

[(b)](d) The district board of education, through its chief school administrator, or the parent(s) may apply in writing for emergency relief as part of a request for a hearing, or at any time after such request according to N.J.A.C. 1:6A-3.1. The request shall be supported by an affidavit. The applicant shall provide copies of the request to the other party.

1. Prior to transmittal of the hearing request to the Office of Administrative Law, application for emergency relief shall be made to the Director of the Division of Special Education, Department of Education [for immediate transmittal to the Office of Administrative Law]. After [the initial] transmittal[.] of a request for a due process hearing, any application for emergency relief shall be made directly to the Office of Administrative Law.

[2. The Office of Administrative Law shall process and consider the application for emergency relief after all parties have had an opportunity to be heard. For substantiated reasons emergency relief may be granted pending the full hearing decision (N.J.A.C. 1:6A-3.1(e)1-3.).]

[(c) The parent(s) may file a written complaint with the Department of Education according to N.J.A.C. 6:28-9.2 if] (e) If the district board of education fails to implement a hearing decision of the Office of Administrative Law, a request for enforcement may be made by the parent(s). The request shall be made in writing to the Director of the Division of Special Education, Department of Education. On receipt of this request, implementation of the decision shall be assured according to Department of Education procedures.

(f) Pending the outcome of a due process hearing, no change shall be made to the pupil's classification, program or placement unless both parties agree or emergency relief is granted by the Office of Administrative Law according to (c) above.

#### 6:28-2.8 Disciplinary action

(a) Educationally handicapped pupils are subject to the same disciplinary procedures as nonhandicapped pupils[:]. [however] However[:],

[1. No] no educationally handicapped pupil may be disciplined if: [the] 1. The pupil's behavior is primarily caused by his or her educational handicap; or

2. [No educationally handicapped pupil may be disciplined if the] The program that is being provided does not meet the pupil's educational needs.

(b) Before a school staff member can discipline an educationally handicapped pupil, consideration shall be given to the nature of the offending behavior in light of the pupil's handicapping condition and educational needs, except as follows:

1. (No change.)

2. If there is a component of disciplinary action set forth in the pupil's individualized education program.

(c) When an educationally handicapped pupil is suspended, the principal shall forward, at the time of suspension, written notification and description of the reason(s) for such action to the parent(s) with a copy to the child study team.

[(d) When the suspension of an educationally handicapped pupil exceeds a total of 10 school days accumulated in a school year, the] The child study team shall review the status of that pupil in order to:

1. Determine if the behavior which resulted in the suspension was primarily caused by the pupil's handicapping condition;

2. Determine if the pupil's individualized education program is appropriate; and

3. Prepare and forward to the principal and the parent(s) a written [report] statement setting forth their conclusions as to (c)1 and 2 above and their [with] recommendations, if any.

(d) An educationally handicapped pupil whose behavior is primarily caused by his or her educational handicap or whose program does not meet his or her educational needs:

1. Shall not be suspended for more than a total of 10 school days during a school year if the suspensions constitute a significant change in placement, unless emergency relief is granted; and

2. Shall not be suspended more than 10 consecutive school days, unless emergency relief is granted.

(e) Before an educationally handicapped pupil can be considered for expulsion by a district board of education, the pupil shall be reevaluated by the child study team according to N.J.A.C. 6:28-[3.4] 3.7.

(f) Before a noneducationally handicapped pupil is considered for expulsion by a district board of education, the district board of education shall obtain parental consent for referral and the child study team shall conduct [a comprehensive] an initial evaluation according to N.J.A.C. 6:28-3.4.

(g) The child study team shall submit a written report to the district board of education, the chief school administrator and the pupil's parent(s) stating the results of the reevaluation or [comprehensive] initial evaluation required by (e) or (f) above.

1. This report shall indicate whether the pupil's behavior is primarily caused by a handicapping condition and [if] whether the pupil's education program needs modification.

2. (No change.)

#### 6:28-2.9 Pupil records

(a) (No change.)

(b) The parent(s), [or] adult pupil or the designated representative shall be permitted to inspect, review and appeal the contents of the pupil's [education] records maintained by the district board of education under [this chapter] N.J.A.C. 6:3-2. When requested, this inspection shall occur without unnecessary delay before any meeting regarding the individualized education program.

[1. A parent or adult pupil appealing the contents of education records shall notify the chief school administrator in writing of the specific challenge.

2. Within 30 calendar days of receipt of the written request, the chief school administrator shall ensure that a meeting with the parent(s) or adult pupil has been held, a decision has been reached and copies of the decision have been given to each party.

3. If the matter is not resolved satisfactorily, the chief school administrator shall inform the parent(s) or adult pupil that he or she may appeal according to N.J.A.C. 6:28-2.7.]

**6:28-2.10 Least restrictive environment**

(a) Each district board of education shall ensure that:

1. To the maximum extent appropriate, an educationally handicapped pupil shall be educated with children who are not educationally handicapped;

2. Special classes, separate schooling or other removal of educationally handicapped pupils from the regular education environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily;

3. Placement shall be provided in an appropriate educational setting as close to home as possible;

4. Consideration shall be given to any potentially harmful effect which a placement may have on the pupil or the ability of the program to implement the pupil's individualized education program; and

5. When the individualized education program does not describe specific restrictions, the pupil shall be included in the regular school program provided in the district he or she would attend if not handicapped.

i. This includes participation in health and physical education, industrial arts, fine arts, music, home economics, vocational and other regular education programs, intramural and interscholastic sports, nonacademic and extra curricular activities.

**SUBCHAPTER 3. SERVICES****6:28-3.1 Child study teams**

(a) A child study team is an interdisciplinary group of appropriately certified persons who [shall]:

1. [Evaluate] **Shall evaluate, after parental consent for referral has been received, and [determine] participate in the determination of eligibility of pupils for special education and/or related services;**

2. [Coordinate] **Shall coordinate** the development, monitor and evaluate the effectiveness of the individualized education programs;

3. [Deliver] **May deliver** appropriate related services to educationally handicapped pupils;

4. [Provide] **May provide** preventive and support services to nonhandicapped pupils; and

5. [Provide] **May provide** services to the general education staff regarding techniques, materials and programs for pupils experiencing difficulties in learning. Services include, but are not limited to, the following:

i. Consultation with school staff and parents; and

ii. (No change.)

(b) A child study team shall consist of a school psychologist, a learning disabilities teacher-consultant and a school social worker. For pupils ages three to five, the child study team shall include a speech correctionist or speech-language specialist. All members of the child study team shall be employees of a district board of education, have an identifiable, apportioned time commitment to the local school district and shall be available during the hours pupils are in attendance.

(c) (No change.)

(d) **At least one member of the child study team shall be knowledgeable about placement options for educationally handicapped pupils according to N.J.A.C. 6:28-4.**

**6:28-3.2 Identification**

(a) Each district board of education shall adopt written procedures for [screening and] identifying those pupils [between the] ages [of] three [and] through 21 who reside within the local school district who may be educationally handicapped and who are not receiving special education and/or related services as required by this chapter. Children below age three who may be educationally handicapped shall be identified, located and evaluated through programs operated by or through contracts with the Department of Education.

(b) These procedures shall include criteria to identify pupils who may be experiencing physical, sensory, emotional, communication, cognitive or social difficulties.

(c) (No change.)

(d) A pupil new to the local school district and identified, but not classified as educationally handicapped, by the school district

from which the pupil came shall be placed in a regular public school program. If the chief school administrator, after consultation with the child study team, determines that such placement of the pupil may do serious harm to the pupil or to others, the pupil may be placed on home instruction for a period not to exceed 30 calendar days pending evaluation and determination of special education eligibility. Simultaneously with such placement of a pupil on home instruction, the chief school administrator shall initiate referral to the child study team according to N.J.A.C. 6:28-3.3(b) through (h).]

(d) For a child who has been enrolled in an early intervention program, who will be age three according to N.J.A.C. 6:28-1.3 in the following school year and who is identified to the district board of education prior to June 1, the district board of education shall obtain parental consent, determine eligibility and, if appropriate, develop an individualized education program. This shall be completed not later than the opening of school in the following school year.

**6:28-3.3 Referral**

(a) Prior to any decision regarding referral of a pupil to a child study team for determination of eligibility for special education programs or services, interventions in the regular public school program to alleviate educational problems shall be provided to the pupil [and] unless the pupil's educational problem(s) is such that direct referral to the child study team can be supported and documented. [written] **Written documentation of the intervention(s) and its effect, if any, shall be made by the staff of the regular program. [shall be made of their effect]. [1.] The [Parent] parent(s) shall be informed of the interventions attempted and receive a copy of the written documentation.**

[2. Prereferral intervention is not required for a pupil whose educational problem(s) is such that direct referral to the child study team can be supported.]

(b) Pupils identified in conformance with written procedures adopted by the board of education as being potentially educationally handicapped and considered to require services beyond those available within the regular public school program shall be referred to the child study team [in conformance with written procedures adopted by the district board of education]. Referral to the child study team shall take place after written parental consent has been received.

[(c) The parent(s) of a pupil being considered for referral to a child study team shall receive written notification according to the procedural safeguards described in N.J.A.C. 6:28-2.3.]

[(d)]1. When parental consent for a pupil's referral to the child study team is withheld, a district board of education may request a due process hearing according to N.J.A.C. 6:28-2.7.

(c) **The parent(s) may initiate referral of his/her child by making a written request which shall be forwarded to the child study team.**

[(e)](d) **Audiometric screening shall be conducted for every pupil referred to the child study team according to N.J.A.C. 6:29-8.**

(e) **Vision screening shall be conducted by the school nurse for every pupil referred to the child study team.**

(f) When a parent identifies a child age three to five as potentially preschool handicapped, the district board of education shall use a screening procedure which includes, at a minimum, an observation of the child to determine if the child should be referred to the child study team for comprehensive evaluation. **Screening shall be completed within 30 calendar days of parental request.**

[(g) When a child who has been enrolled in an early intervention program becomes age three, as defined in N.J.A.C. 6:28-1.3, the district board of education shall accept the child as identified and proceed with referral.]

[(h)](g) When the Division of Youth and Family Services, Department of Human Services, identifies a potentially educationally handicapped pupil for whom a local school district is responsible, that district shall accept the pupil's identification by the Division of Youth and Family Services and shall request parental consent to refer the pupil to its child study team according to this subchapter.

**6:28-3.4 [Comprehensive evaluation] Evaluation**

(a) Following receipt of parental consent for referral of a pupil, the child study team shall meet and determine the need for [a comprehensive] **an initial** evaluation and [design] **write** an evaluation plan. Prior to the development of the evaluation plan, a determina-

tion of the pupil's communication skills and dominance in English and the native language shall be completed. **The parent(s) and adult pupil shall be provided with a copy of the evaluation plan and notice according to N.J.A.C. 6:28-2.3.** The evaluation plan shall include:

- 1.-2. (No change.)
- 3. The language(s) or method(s) of communication to be used in the evaluation process; **and**
- 4. (No change.)
- (b) (No change.)
- (c) All evaluations specified in this chapter shall:
  - 1. Be conducted on an individual basis;
  - 2. Use information from group tests only to supplement individual evaluations;
  - 3. Be conducted in the language(s) or method of communication determined in the evaluation plan;
  - 4. Consider the pupil's sociocultural background and adaptive behavior in home, school and community]

[(d)](c) The chief school administrator or designee shall request that the parent(s) provide information to the child study team to be considered as part of the evaluation data.

[(e)](d) [A comprehensive] **An initial** evaluation shall consist of the following:

1. A comprehensive health appraisal for pupils ages three [to] **through 21** shall be performed by a physician employed by the district board of education.

i. The comprehensive health appraisal shall include, but not be limited to, an assessment of prenatal, perinatal[,] **and** postnatal factors, **as well as** developmental and early childhood illnesses and injuries and a review of health screenings.

ii. The [school] physician **employed by the district board of education** shall examine the pupil, including all body systems, and write a summary indicating the effect of any current health problem or medical treatment on the pupil's learning.

iii.-iv. (No change.)

2. (No change.)

3. An educational assessment shall be the responsibility of a learning disabilities teacher-consultant employed by the district board of education. It shall include observation of the pupil in other than a testing session, review of the pupil's educational history, conferences with the pupil's teacher(s)[,] and an evaluation and analysis of the pupil's academic performance and learning characteristics.

4. A social assessment shall be the responsibility of a school social worker employed by the district board of education. The social assessment shall include observation of the pupil and communication with the pupil and **his or her** parent(s). It shall also include an evaluation of the pupil's adaptive social functioning and emotional development and of the family, social and cultural factors which influence the pupil's learning and behavior in the educational setting.

**5. For children ages three to five, a speech and language assessment shall be the responsibility of a speech correctionist or speech-language specialist employed by the district board of education. The assessment shall include observation of the pupil, communication with the parent(s) and an evaluation and analysis of speech and language development.**

[5.](e) The child study team shall include pertinent information from the parent(s), **the pupil's teacher(s)** and other certified school personnel when rendering evaluation and eligibility decisions.

(f) In addition to evaluations conducted by the school physician and the child study team, [a determination of certain handicapping conditions requires the] evaluation by **additional specialists may be required** as listed in N.J.A.C. 6:28-3.5(c).

[(g)] Examination results and findings of other specialists shall be included in the comprehensive evaluation where appropriate.]

[(h)](g) The requirements for evaluation by the child study team do not apply to a pupil confined at home or to a hospital **for 60 calendar days or less** by a physician or to a pupil with a speech or language problem when the nature of that problem does not warrant a comprehensive evaluation by a child study team.

[(i)](h) If the reports and evaluations of other New Jersey public school district child study team members, [a] Department of Education approved clinics or agenc[y]ies, or [a] professionals in private practice are accepted by members of the child study team, such

acceptance shall be noted in writing and shall become part of the report(s) of the child study team member(s). If a report or evaluation is rejected, a written rationale shall be provided.

[(j)] A reevaluation to determine the status of each educationally handicapped pupil shall be conducted at least every three years. Reevaluation shall be conducted sooner if conditions warrant.

1. The child study team shall determine which evaluations are needed based upon demonstrated pupil progress in meeting the goals and objectives of the individualized education program.

2. The child study team shall design an evaluation plan as described in N.J.A.C. 6:28-3.4. The parent(s) shall be notified in writing of the evaluation plan.

3. When a change in classification is being considered, written documentation supporting this decision shall be developed by the child study team.

4. Reevaluation shall be conducted prior to the termination of services.]

[(k)](i) By June 30 of a pupil's last year in a program for the preschool handicapped, the child study team shall [review available assessment information and obtain the additional evaluations necessary to determine eligibility] **reevaluate** and, if appropriate, [classification] **classify** according to N.J.A.C. 6:28-3.5.

6:28-3.5 Determination of eligibility

(a) When an **initial** evaluation is completed, [the child study team and parent(s) shall meet with the school principal and referring staff member(s), if they choose to participate, in order] **a meeting according to N.J.A.C. 6:28-2.3(f) shall be convened. The child study team shall attend. The purpose of the meeting shall be to:**

[1. Develop a collaborative evaluation summary:]

[2.]1. Determine whether the pupil is eligible for special education and/or related services; **and**

[i. If a pupil is determined to be eligible for special education and/or related services, the collaborative evaluation summary shall become the basis for the current educational status statement of the individualized education program.]

[3. Determine]2. **If eligible, determine a single classification category as defined in [(e)] (d) below[:].**

i. **For pupils age five through 21, when a pupil's assessment data suggest multiple handicapping conditions but do not meet the criteria for the classification of multiply handicapped, the classification category that best describes the pupil's educational status and needs shall be assigned. Additional behavior or conditions and individual program and/or service needs shall be included in the individualized education program.**

ii. **For pupils age three through five who have an identified handicapping condition and/or a measurable developmental impairment who require and would benefit from special education and related services, the classification of preschool handicapped shall be assigned.**

(b) (No change.)

[(c)] When an educationally handicapped pupil transfers into a local school district, review of the appropriateness of the classification and individualized education program shall be conducted within 30 calendar days.]

[(d)](c) Classification of pupils determined to be eligible for special education and/or related services shall be **determined collaboratively by the child study team, parent(s) and if they choose to participate, the school principal and referring staff members. Classification according to the following definitions shall be based on [the] all evaluations [of the child study team, the school physician and such other specialists as noted and shall be according to the following definitions] conducted:**

1. "Auditorily handicapped" means an inability to hear within normal limits due to physical impairment or dysfunction of auditory mechanisms characterized by [(d)](c)1i and ii below. Evaluations by a specialist qualified in the field of audiology and a speech and language evaluation by a certified speech correctionist **or speech-language specialist** are required.

i.-ii. (No change.)

2. "Chronically ill" means a health condition which makes it impractical to receive adequate instruction through a regular school program and characterized by [(d)](c)2i or ii below. Evaluation by

the school physician or his or her review and written acceptance of the medical report of another physician is required. The school nurse shall assist in the accumulation of the data necessary to determine eligibility.

i. (No change.)

ii. "Eligible for home instruction" means a [temporary] health condition **determined by the school physician to be temporary and to [which] require[s individual] instruction be provided to a pupil confined to home or hospital for at least a two week period of time [as determined by the school physician]. The evaluation shall be conducted according to N.J.A.C. 6:28-3.4(h).**

3. "Communication handicapped" means impaired native speech or language which is outside the range of acceptable variation, adversely affects a pupil's educational performance and is not due primarily to hearing impairment as defined under "auditorily handicapped." It is characterized by [(d)](c)3i or ii below. An evaluation by a certified speech correctionist or **speech-language specialist** is required.

i. (No change.)

ii. "Eligible for speech [correction]-**language services**" means a mild to moderate disorder in language, articulation, voice or fluency which requires instruction by a speech correctionist or **speech-language specialist. The evaluation shall be conducted according to N.J.A.C. 6:28-3.4(h).**

4. "Emotionally disturbed" means the exhibiting of seriously disordered behavior over an extended period of time which adversely affects educational performance and [may] **shall** be characterized by [(d)](c)4i or ii below. An evaluation by a psychiatrist experienced in working with children is required.

i. (No change.)

ii. Behaviors inappropriate to the circumstances, [such as,] a general or pervasive mood of depression or the development of physical symptoms or irrational fears.

5. "Mentally retarded" means cognitive, social and academic functioning which is seriously below age expectations. Such functioning is comprehensive in nature being demonstrated in home, school and community settings, and characterized by one of the following:

i. and ii. (No change.)

iii. "Eligible for day training" means a level of functioning profoundly below age expectations whereby on a consistent basis the pupil **requires significant personal care and supervision and demonstrates [an] a significant deficit in the [in]ability to understand and respond to simple verbal or nonverbal communication, and [demonstrates an inability] to make known basic wants or needs], and requires total personal care and supervision].**

6. (No change.)

7. "Neurologically or perceptually impaired" means impairment in the ability to process information due to physiological, organizational or integrational dysfunction which is not the result of any other educationally handicapping condition or environmental, cultural or economic disadvantage and is characterized by [(d)] (c)7i or ii below.

i.-ii. (No change.)

8. "Preschool handicapped" means those children [between the ages of] **age three [and] through five** who have an identified handicapping condition and/or a measurable developmental impairment who require and would benefit from special education and related services.

9. (No change.)

10. "Socially maladjusted" means a consistent inability to conform to the standards for behavior established by the school. Such behavior is seriously disruptive to the education of the pupil or other pupils and is not due to emotional disturbance as defined in [(d)] (c)4 above. **[An] If determined necessary by the child study team, an evaluation by a psychiatrist experienced in working with children is to be obtained [if determined necessary by the child study team].**

11. "Visually handicapped" means an inability to see within normal limits as characterized by [(d)] (c)11i or ii below. An evaluation by a specialist qualified to determine visual disability is required. **Visually handicapped pupils eligible for special education and/or related services shall be reported to the Commission for the Blind and Visually Impaired.**

i.-ii. (No change.)

6:28-3.6 Individualized education program

(a) (No change.)

(b) The basic plan of the individualized education program shall be written upon completion of the child study team's evaluation [and within 30 calendar days of the determination that the pupil is eligible for special education and/or related services and] according to the timelines in N.J.A.C. 6:28-2.1(c), **and prior to the pupil's placement in a special education program.**

(c) The basic plan of the individualized education program shall be developed [at a meeting attended by the child study team, the parent(s), teacher(s) having knowledge of the pupil's educational performance and the pupil, when appropriate. The referring certified school personnel, the school principal or designee and other appropriate individuals may participate in the meeting. A curriculum consultant from the Division of Mental Retardation, Department of Human Services, shall be included for those pupils classified as "eligible for day training."] **with the participation of the parent(s) and members of the district board of education child study team who have participated in the evaluation and those persons attending the meeting according to N.J.A.C. 6:28-2.3(f).**

[1. Prior to the meeting to develop the basic plan, the chief school administrator or designee shall provide written notification to the parent(s) according to N.J.A.C. 6:28-2.3.

2. The meeting shall be scheduled at a mutually agreed upon time and place. If the parent(s) cannot attend the meeting(s), the chief school administrator or designee shall ensure parental participation, including the use of individual or conference telephone calls. Records shall be maintained of all attempts to secure parental participation.

3. Arrangements shall be made for a qualified interpreter to assist parents who are deaf or whose native language is other than English.

4. School personnel and parent(s) of an educationally handicapped pupil shall be allowed to use an audio-tape recorder during the individualized education program meetings.]

(d) When a pupil has been classified as eligible for speech [correction]-**language services** or eligible for home instruction, the individualized education program meeting shall be as follows:

1. The meeting shall be attended by **the parent(s) and, when appropriate, the pupil. [and/or a member(s) of the child study team and, depending] Depending** on the classification, either the school physician or speech correctionist or **speech-language specialist shall attend.**

2. (No change.)

3. For a pupil eligible for home instruction [the teacher(s)], **at least one of the certified school personnel** having knowledge of the pupil's educational performance shall participate in the meeting.

4. (No change.)

(e) The basic plan of the individualized education program shall include, but not be limited to:

1. (No change.)

2. A statement of current educational status[, drawn from the collaborative evaluation summary,] which describes the pupil's present levels of educational performance; [and adaptive behavior, including academic achievement, cognitive functioning, personal and social development, physical and health status, and where appropriate, language proficiency, communication style, physical education and recreation needs, prevocational, vocational and self-help skills;]

3. (No change.)

4. A statement of objectives[, which describes specific measurable steps between the current educational status and the annual goals; **and**

5. A description of the pupil's educational program which includes:

i. (No change.)

ii. An explanation of why the type of program and placement is the least restrictive environment appropriate in light of the pupil's needs[; [Determination of a pupil's least restrictive environment shall also include the following:

(1) The placement shall be in an appropriate educational setting as close to his or her home as possible.

(2) In selecting the least restrictive environment, consideration shall be given to any potentially harmful effect on the pupil.]

iii. A description of the extent to which the pupil will participate in regular educational programs. The participation of an educationally handicapped pupil in regular school programs or activities shall be based on the nature and extent of the pupil's educational needs. Appropriate curricular or instructional modifications to the **regular education program** shall be stipulated. Precautionary arrangements shall be made to protect the safety and well-being of the pupil[.];

iv. A description of exemptions from regular education program options [or] **including testing programs and State and local graduation requirements** which includes a rationale for the exemptions;

v. Reasons why the individualized education program goals and objectives do not include the proficiencies measured by the High School Proficiency Test and the requirement to demonstrate mastery of curriculum proficiencies for pupils exempted from these requirements;

vi. A statement of the alternate [proficiencies as replacements for the high school proficiencies for pupils exempted from the High School Proficiency Test and curriculum proficiencies] **requirement for each exemption from State and local high school graduation requirements.** The individualized education program shall identify which alternate [proficiencies] **requirements** must be achieved by the educationally handicapped pupil to qualify for the State endorsed diploma issued by the school district;

vii. **For educationally handicapped pupils age 14 and over, the district board of education shall demonstrate that consideration has been given to the preparation of the pupil for the appropriate post-secondary program, work setting, adult services or independent living;**

[vii.]viii. A statement of and rationale for the length of time the pupil is expected to be in a special education program including the length of the school day and an extended academic year, when appropriate;

[viii.]ix. A statement specifying the language to be used for instruction[.] if other than English;

[ix.]x. A statement which describes the [specific] **special education and/or related services, including the frequency and duration of services and the date when they will begin [and the length of time they will be provided];**

[x.]xi. A statement describing the roles of specific school personnel and their responsibilities for implementing the various aspects of the individualized education program; **and**

[xi.]xii. The **criteria, procedure and schedule to determine if the pupil's goals and objectives are being met.**

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

(h) The instructional guide shall be completed within 20 calendar days after the [program] **basic plan** has been implemented.

(i) The instructional guide shall include, but not be limited to, the following:

1.-3. (No change.)

4. Any special equipment and instructional media and materials needed for learning[.]; **and**

**5. Specific descriptions of instructional responsibilities of the regular and special education teachers.**

(j) Annually, or more often if necessary, the case manager, parent(s), teacher(s) [and], the pupil, if appropriate, **and other individuals at the discretion of the parent(s) or district board of education** shall meet to review and revise the instructional guide and the basic plan of the individualized education program **and determine placement** as specified in this subchapter.

1. [This meeting shall occur] **The annual review shall be completed by June 30 of a handicapped pupil's last year in a preschool program.**

2. [This meeting shall occur] **The annual review shall be completed by June 30 of a handicapped pupil's last year in an elementary school program and shall include input from the staff of the secondary school.**

(k) [A copy of the individualized education program shall be signed by members of the child study team and] **Documentation of those persons who participated in the development of the individualized education program shall be maintained and a copy of the individualized education program shall be provided to the parent(s) in their native language according to N.J.A.C. 6:28-2.4.**

[(l) The basic plan of the individualized education program shall be implemented within 90 calendar days after receipt of parental consent to refer the pupil to the child study team. If parental consent for the initial placement is withheld, the district board of education may appeal the parental refusal in accordance with the procedures for a due process hearing according to N.J.A.C. 6:28-2.7.]

**(l) When the parent(s) declines participation in an individualized education program meeting or is in disagreement with the recommendations, the remaining participants shall develop a written individualized education program in accordance with this section. However, initial implementation of special education cannot occur until consent is obtained or a due process hearing decision is issued. For other than initial implementation of special education, consent is not required. The parent(s) shall be provided written notice according to N.J.A.C. 6:28-2.3.**

(m) During a 21 year old handicapped pupil's last year in an educational program, a meeting shall be held including the parent(s), the case manager, **the pupil, if appropriate,** and other individuals as appropriate to develop nonbinding written recommendations concerning services and resources available after the responsibility of the district board of education has ended.

#### 6:28-3.7 Reevaluation

(a) A reevaluation and individualized education program, if appropriate, shall be completed within three years of the date of the previous classification. Reevaluation shall be conducted sooner if conditions warrant or if the pupil's parent(s) or teacher request the reevaluation.

1. The child study team shall determine which child study team members and/or specialists will conduct the evaluations based upon demonstrated pupil progress in meeting the goals and objectives of the individualized education program. The reevaluation shall include assessment by at least two members of the child study team. For pupils who are auditorily handicapped, in addition to the two required evaluations provided by the child study team, an audiological evaluation and a speech and language assessment according to N.J.A.C. 6:28-3.5(c)1 shall be required.

2. The child study team shall write an evaluation plan as described in N.J.A.C. 6:28-3.4(a). The parent(s) shall be provided with a copy of the evaluation plan and notice according to N.J.A.C. 6:28-2.3.

3. Reevaluations shall be conducted according to N.J.A.C. 6:28-3.4(c), (d), (f) and (g). Individual child study team assessment shall be conducted according to N.J.A.C. 6:28-3.4(e)2, 3, 4 or 5.

4. Reevaluation shall be conducted when a change in classification or significant change in placement is being considered.

5. When the reevaluation is completed, the child study team shall attend a meeting according to N.J.A.C. 6:28-2.3(f) and, if appropriate, develop the basic plan of the individualized education program.

#### 6:28-3.7]3.8 Related services

(a) Related services shall be provided to an educationally handicapped pupil according to his or her individualized education program and may include **one or more** of the following:

1. Counseling services shall be provided in the following manner:  
i. Counseling services for an educationally handicapped pupil shall be provided within the public schools during the school day by certified school psychologists, social workers [and] **or guidance counselors[.]and**

ii. Counseling and/or training services for parents shall be provided to assist them in understanding the special educational needs of their child.

2. Occupational and physical therapy shall be provided in the following manner:

i. Occupational and/or physical therapy shall be provided by educationally certified [or licensed] therapists[.]; **and**

ii. A district board of education may contract with approved clinics and agencies for the provision of occupational and/or physical therapy.

3. Recreation shall be provided by certified school personnel.

4. Speech [correction] **and language services** for a pupil classified as other than "eligible for speech [correction]-language services," may

be provided as a related service. Additional classification as "eligible for speech [correction]-language services" is not required.

5. Transportation shall be provided in the following manner:

i. The district board of education shall provide transportation as required in the individualized education program or as prescribed by the school physician. Such services shall include special transportation equipment, transportation aides and special arrangements for other assistance to and from and in and around the school[.];

ii. When out-of-district placement for educational reasons is made by a district board of education, transportation shall be provided consistent with the school calendar of the receiving school[.];

iii. When necessary, the case manager shall provide the transportation coordinator and the bus driver with specific information including safety concerns, mode of communication, health and behavioral characteristics of a pupil assigned[.]; **and**

iv. [When transportation is provided for] **For** handicapped pupils below the age of five, safety belts or restraint systems are required[.]; **and**

6. Other related services[, as necessary, shall be] as specified in the pupil's individualized education program.

(b) [Consistent with professional practice, school] **School** personnel may give advice **to parents** regarding additional services which are not required by this chapter. Such advice places no obligation on the district board of education to provide or fund such services.

#### 6:28-[3.8]3.9 Services to pupils in programs operated by the State of New Jersey

(a) For a pupil classified as eligible for day training attending an approved day program, the district board of education shall provide the services [described in] **according to** N.J.A.C. 6:28-3.2 through [3.6]3.8.

(b) For a pupil in residence in a State facility, the responsible district board of education shall:

1. Maintain the educational records sent by the State facility according to N.J.A.C. 6:3-2; **and**

2. (No change.)

(c) For a pupil in a program operated by or under contract with the Department of Education, the district board of education retains responsibility for **the provision of** programs and services under this chapter.

### SUBCHAPTER 4. PROGRAMS

#### 6:28-4.1 General requirements

(a) Each district board of education shall provide [education educational programs and related services for **educationally** handicapped pupils [in accordance with their] **required by the** individualized education programs **of those pupils for whom the district board of education is responsible.**

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

[(d) Appropriate facilities shall be provided for educationally handicapped pupils according to N.J.A.C. 6:22-1.]

[(e)] (d) Appropriate written curricula shall be developed and appropriate materials shall be provided for educationally handicapped pupils.

[(f)] (e) The length of the school day and the academic year [for] **of** programs for educationally handicapped pupils shall be at least as long as that established for all pupils.

1.-2. (No change.)

[(g)] All professional personnel serving educationally handicapped pupils shall hold the appropriate New Jersey certification or license commensurate with their assignments.]

[(h)](f) [A] **If a classroom aide[,]** is employed, **he or she shall work** under the direction of a principal, special education teacher, general education teacher or other appropriately certified personnel[, may assist] in a special education program. The job description of a classroom aide shall be approved by the Department of Education through its county office.

(g) **Physical education services, specially designed if necessary, shall be made available to every educationally handicapped pupil age five through 21, including those pupils in separate facilities.**

[(i) The district board of education through its chief school administrator or designee shall be responsible for the placement of an educationally handicapped pupil in conformance with the pupil's individualized education program.]

[1.] (h) When an educationally handicapped pupil transfers from one New Jersey school district to another, **or when a pupil classified as educationally handicapped by a State or local school district outside of New Jersey transfers into a New Jersey school district**, and immediate review of the **classification and individualized education program cannot be conducted, the pupil shall be immediately** placed in a program consistent with the **goals and objectives of the current individualized education program** for a period not to exceed 30 calendar days.

[2. When appropriate, an educationally handicapped pupil shall be grouped with or participate with noneducationally handicapped pupils or less severely handicapped pupils in activities that are part of the educational program.]

[3.](i) When the individualized education program of [a] **an educationally** handicapped pupil does not describe any restrictions, the pupil shall be included in the regular school program provided by the district board of education.

[i. This includes participation in health and physical education, industrial arts, fine arts, music, home economics, vocational and other regular education programs, intramural and interscholastic sports, and extracurricular and cocurricular activities.]

[ii.]1. When instruction in [these areas] **health, physical education, industrial arts, fine arts, music, home economics, vocational and other regular education programs, intramural and interscholastic sports, nonacademic and extracurricular activities** is provided to groups consisting solely of educationally handicapped pupils, the size of the groups and the age range shall conform [with] **to the requirements for special class programs described in this subchapter.**

(j) (No change.)

(k) **Each district board of education shall ensure that all educationally handicapped pupils have available to them the variety of educational programs and services available to non-handicapped pupils.**

#### 6:28-4.2 Program [implementation] options

(a) Educational program options [shall] include the following:

1. Instruction in school which complements regular or special class programs through the following means:

i.-ii. (No change.)

iii. Speech [correction]-language services; **and**

iv. (No change.)

2. (No change.)

3. A special education program in the following settings:

i.-iii. (No change.)

iv. An educational services commission; **and**

v. (No change.)

4.-6. (No change.)

7. An approved [privately operated special class] **private school for the handicapped** in the continental United States, when it is not appropriate to provide services according to (a)1 through 6 above. Placement in [a privately operated special class] **an approved private school for the handicapped** shall only be made with the prior written approval of the Department of Education through its county office[.]; **and**

8. Individual instruction at home or in [school] **other appropriate facilities**, excluding home instruction for medical reasons, with the prior written approval of the Department of Education through its county office, **only** when it is not appropriate to provide a special education program for an educationally handicapped pupil according to (a)1 through 7 above.

#### 6:28-4.3 Program criteria: supplementary instruction, speech and resource rooms

[(b) The following program criteria shall be met:

1.](a) Supplementary instruction and speech [correction]-language services provided to educationally handicapped pupils shall be in addition to the regular instructional program and shall meet the following criteria:

[i.]1. Speech [correction may]-**language services** shall be given individually or in groups not to exceed three pupils[.];

[ii.]2. Supplementary instruction [may] **shall** be given individually or in groups not to exceed five pupils[.];

[iii.]3. A teacher providing supplementary instruction shall be appropriately certified for the subject or level in which instruction is given **according to the requirements of N.J.A.C. 6:11[.];**

**4. Supplementary and resource room instruction shall not be provided to pupils by the same teacher during the same instructional period; and**

[iv.]5. Speech [correction]-**language services** shall be provided by a certified speech correctionist or **speech-language specialist.**

[2.](b) Resource room programs shall be instructional centers offering individual and small group instruction in place of regular classroom instruction, **based on curriculum adopted by the board of education. Resource rooms** [and] shall meet the following criteria:

[i.]1. An educationally handicapped pupil in a resource room shall be enrolled on a regular public school class register with his or her chronological peers. Instructional responsibility for such a pupil shall be shared between the resource room teacher and the regular class teacher(s) **as described in the individualized education program.**

[ii.]2. Depending on the type of resource room program, the resource room teacher shall hold certification as teacher of the handicapped, or teacher of blind or partially sighted, or teacher of deaf **and/or** hard of hearing.

[iii.] A resource room teacher shall be provided one hour per day or, in the secondary or departmentalized program one instructional period per day, for consultation with the regular teaching staff.]

[iv.]3. Types of resource room programs shall be designated as follows:

[(1)]i. Single handicap program for pupils with the same classification;

[(2)]ii. Mixed handicap program for pupils with different classifications; **and**

[(3)]iii. Open program for nonhandicapped and handicapped pupils.

[v.]4. The number of pupils in a resource room at any given time shall not exceed five. The total number of **resource room** pupils assigned to a resource room teacher shall be no more than 20.

**i. When a resource room teacher is assigned other instructional responsibilities, the maximum number of resource room pupils that can be assigned to that teacher shall be less than 20. The maximum number of pupils shall be determined by dividing the number of periods of resource room instruction to which that teacher is assigned by the number of periods of that teacher's total instructional time and multiplying the result by 20. Where the school divides its instructional day by hours rather than periods, the calculation shall be performed by substituting hours for periods.**

[vi.]5. The maximum amount of time per day a pupil [shall] **may** participate in a resource room program at the elementary level is two hours; at the secondary level, two instructional periods.

**6:28-4.4 Program criteria: special class programs, secondary, vocational and vocational rehabilitation**

[3.](a) Special class programs shall meet the following criteria:

[i.]1. An educationally handicapped pupil in a special class program shall be enrolled on a special class register[.];

[ii.]2. Pupils shall be the primary instructional responsibility of [the] **a full-time** special education teacher **assigned to that class.** Such teachers shall work [cooperatively] with other teachers to whom the educationally handicapped pupil may be assigned for portions of his or her educational program[.];

[iii.]3. Depending on the educational handicap(s) of the pupils assigned to the special class program the special class teacher shall hold certification as teacher of the handicapped, [or] teacher of blind or partially sighted, **and/or** teacher of deaf or hard of hearing. Teachers of the preschool handicapped shall additionally hold nursery school endorsement[.];

[iv.]4. The age span in special class programs shall not exceed four years **except for eligible for day training pupils according to N.J.A.C. 6:28-8.4(e)3[.];**

**5. A special class program may not be approved as a kindergarten;**

[v.]6. A special class program shall serve pupils who have the same classification. Class sizes shall not exceed the following:

[(1)]i. Auditorily handicapped—[8] **eight** pupils;

[(2)]ii. Chronically ill—15 pupils;

[(3)]iii. Communication handicapped—[8] **eight** pupils;

[(4)]iv. Emotionally disturbed—[8] **eight** pupils;

[(5)]v. Mentally retarded, educable—[15] **12** pupils;

[(6)]vi. Mentally retarded, trainable—10 pupils;

[(7)]vii. Mentally retarded, eligible for day training—[9] **nine** pupils (pupil to staff ratio of three to one);

[(8)]viii. Multiply handicapped—[8] **eight** pupils;

[(9)]ix. Neurologically impaired—[8] **eight** pupils;

[(10)]x. Orthopedically handicapped—10 pupils;

[(11)]xi. Perceptually impaired—12 pupils;

[(12)]xii. Preschool handicapped—[8] **eight** pupils (classroom aide required);

[(13)]xiii. Socially maladjusted—12 pupils; **and**

[(14)]xiv. Visually handicapped—[8] **eight** pupils[.]; **and**

[vi.]7. The above maximum class sizes may be increased no more than one-third with the addition of a classroom aide **or a second classroom aide where one is already required** by obtaining prior written approval from the Department of Education through its county office.

**(b) Secondary special class programs shall meet the following criteria:**

**1. Programs shall be in schools in which any combination of grades seven through 12 is contained;**

[4.]2. Enrollment in secondary special class programs may be increased by one-half the maximum class size for pupils with the same classification as noted in [(b)3v](a)6 above[.]; [For instructional purposes, no group shall contain more than the maximum number of educationally handicapped pupils with the same classification as noted in (b)3v and vi above.]

**3. For instructional purposes:**

**i. In all class groups comprised of pupils with a single classification, class sizes shall be according to (a)6 and 7 above; and**

**ii. In all class groups comprised of pupils with mixed handicaps, the group shall be limited to eight educationally handicapped pupils; and**

[i.]4. An educationally handicapped pupil enrolled on the register of a secondary special class program shall receive a minimum of three instructional periods with the certified teacher(s) of the handicapped who maintains primary instructional responsibility for the pupil. The remainder of the pupil's instruction may be provided in the following settings, as appropriate:

[(1)]i. A class [period(s)] consisting solely of educationally handicapped pupils instructed by a regular education teacher where an adapted general education curriculum is used. [In such classes enrollment for each period shall be as follows:]

[(A)] (1) In class groups comprised of pupils with a single classification, class sizes shall be according to [(b)3v] (a)6 above.

[(B)] (2) In class groups comprised of pupils with mixed handicaps, the group shall be limited to eight educationally handicapped pupils.

[(2)] ii. A regular education class instructed by [an appropriately certified] a subject area teacher. The number of educationally handicapped pupils who are enrolled on a special class register who can attend any given instructional period in such classes shall be limited to four if program modification is required.

**(c) Vocational education programs shall meet the following criteria:**

[ii.] Vocational education programs shall be made available to an educationally handicapped pupil at the secondary level consistent with his or her individualized education program.]

[(1)]1. For the pupil placed in a vocational program outside of the local district, responsibility shall be as follows:

[(A)]i. In a full-time county vocational school, all responsibility for programs and services rests with the receiving district board of education[.];

[(B)]ii. In a shared-time county vocational school and in an area vocational technical school, primary responsibility rests with the

sending district board of education. Vocational personnel shall participate in the individualized education program decisions[.]; and  
 [(2)]2. In vocational shop, and related academic programs class sizes shall be as follows:

[(A)] For a class consisting solely of educationally handicapped pupils, the limit shall be 10;

[(B)] For participation in a regular class, the number of educationally handicapped pupils shall be limited to four if program modification is required.]

i. For a class consisting of educationally handicapped pupils, the maximum class size with an aide shall not exceed 15. Class size shall not exceed 10 without the addition of an aide unless prior written approval of the Department of Education through its county office is granted. Approval shall be considered according to procedures specified by the Department of Education. Requests for approval of a class size which exceeds 10 without an aide shall include, but not be limited to, a description of the following pupil needs and instructional considerations:

- (1) Nature and degree of handicapping condition;
- (2) Interests, aptitudes and abilities of the pupil;
- (3) Functional level;
- (4) Employment potential;
- (5) Type of occupational area;
- (6) Instructional strategies;
- (7) Safety factors; and
- (8) Physical facility requirements.

[(d)] Secondary level pupils may be placed in vocational rehabilitation facilities in accordance with the following:

1. Vocational rehabilitation facilities shall be approved by the New Jersey Department of Labor, the Division of Vocational Rehabilitation Services and the Department of Education, through its county offices, to provide vocational evaluation and work adjustment training only;

2. Placement shall be on a part-time basis. All other mandated instruction/services, as specified in the individualized education program shall be provided in an education program approved by the Department of Education; and

3. Placement in vocational rehabilitation facilities shall be made with prior written approval by the Department of Education through its county office.

#### 6:28-4.5 Program criteria: home instruction

[5.](a) Instruction provided in lieu of classroom instruction for pupils confined to their residence and classified by the school physician as eligible for home instruction shall meet the following criteria:

[i.](1) Instruction shall be provided at the pupil's place of confinement[.];

[ii.](2) The pupil shall be carried on an individual home instruction register[.];

[iii.](3) Instructional services shall begin within seven calendar days after eligibility has been established[.];

[iv.](4) The teacher providing instruction shall be appropriately certified as teacher of the handicapped or for the subject or level in which the instruction is given[.];

[v.](5) The pupil shall receive a program that meets the requirements of the district board of education for promotion and graduation[.] unless exempted in the individualized education program;

[vi.](6) Instruction shall be provided for no fewer than five hours per week. The five hours of instruction per week shall be accomplished in no fewer than three visits by a certified teacher on at least three separate days. When instruction is provided by direct communication to a classroom program by telephone, computer or television, this instruction shall be in addition to the basic five hours of instruction [by a teacher.]; and

[vii.](7) Instruction may be provided for up to 60 calendar days in a school year. If the school physician believes that instruction for a longer period of time is indicated, referral shall be made according to N.J.A.C. 6:28-3.3 for determination by the child study team of eligibility for special education and/or related services.

[(b)] A pupil classified as educationally handicapped [by a child study team may] shall have [the] his or her individualized education program implemented through one to one instruction at home or in

another appropriate setting when it can be [demonstrated] documented that no other program option is appropriate at that time.

[i.](1) Prior written approval to provide home instruction shall be obtained from the Department of Education through its county office.

[ii.](2) Approval shall be obtained for a maximum of 60 calendar days.

[iii. Subsection (b)5ii, iv, v and vi] 3. Paragraphs (a)2, 3, 4 and 5 above shall apply to the home instruction program of pupils classified by the child study team.

4. Instruction shall be provided for no fewer than 10 hours per week.

(c) Instruction provided for pupils confined to a hospital, convalescent home or other medical institution, classified by the school physician as eligible for home instruction or classified by the child study team as educationally handicapped, shall meet the following criteria:

1. Instruction shall be provided by a district board of education, educational services commission or jointure commission at the pupil's place of confinement;

2. Paragraphs (a)2, 3, 4, 5 and 7 above shall apply to the home instruction program; and

3. Individualized instruction shall be provided through either;

i. One to one instruction according to (a)6 above;

ii. Instruction to small groups of no more than three pupils, for no fewer than 15 hours per week; or

iii. When instruction is provided by direct communication to a classroom program by telephone, computer or television, this instruction shall be in addition to (c)3i or ii above.

#### 6:28-4.6 Exceptions

[(c)](a) [Any exceptions regarding] Exceptions to the requirements of this [sub]chapter shall be:

1. [made] only with prior written approval of the Department of Education through its county office[.];

2. For a period not to exceed one year;

3. Regarding length of school day and/or the academic year or class size or classification according to N.J.A.C. 6:28-4.4(a)6 or age range according to N.J.A.C. 6:28-4.4(a)4 or required hours or periods of instruction.

(b) The county office shall:

1. Approve the exceptions incorporated in the pupil's individualized education program; or

2. Convene a meeting of the child study team and parent(s) to review the exceptions and individualized education program and to reach a consensus regarding the delivery of a free, appropriate public education. If it is determined that the granting of the exceptions would interfere with the delivery of a free, appropriate public education to the pupil, the county office may deny the exception.

6:28-[4.3]4.7 (No change in text.)

#### 6:28-[4.4]4.8 Diplomas and graduation

[(a)] A handicapped pupil who entered a high school program prior to September 1981 and who successfully completes his or her individualized education program shall receive the secondary diploma of the school district responsible for his or her education.]

[(b)] (a) An educationally handicapped pupil who entered a high school program in September 1981 or thereafter shall meet the high school graduation requirements according to N.J.A.C. 6:8-7, unless exempted in his or her individualized education program. The individualized education program must specifically address these graduation requirements. [A handicapped pupil shall be exempted from the High School Proficiency Test and demonstration of mastery of the curriculum proficiencies if it can be demonstrated that his or her individualized education program is characterized by goals and objectives which do not include the range of High School Proficiency Test skills and curriculum proficiencies or if the pupil would be adversely affected by taking the High School Proficiency Test.] The individualized education program shall specify which requirements would qualify the educationally handicapped pupil for a State endorsed diploma issued by the school district responsible for his or her education.

(b) An educationally handicapped pupil shall be exempted from the High School Proficiency Test and demonstration of mastery of the curriculum proficiencies if it can be demonstrated that his or her individualized education program has not included the range of proficiencies measured by High School Proficiency Test and curriculum proficiencies or if the pupil would be adversely affected by taking the High School Proficiency Test.

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

(e) Educationally handicapped pupils meeting the standards for graduation according to N.J.A.C. 6:28-4.8, shall have the opportunity to participate in graduation exercises and related activities on a nondiscriminatory basis.

SUBCHAPTER 5. APPROVED CLINICS AND AGENCIES

6:28-5.1 General requirements

(a) [Clinics] Only clinics and agencies approved by the Department of Education [are organizations which] may provide those contracted services to district boards of education [as] delineated in this subchapter.

(b) (No change.)

(c) Services [provided] which may be contracted shall be restricted to the following:

1. For public school pupils[, clinics and agencies may provide]:

i. Independent child study team evaluations and/or [Child] child study team diagnostic services to supplement existing local district services; and

ii. (No change.)

2. For nonpublic school pupils[, clinics and agencies may provide]:

i-iii. (No change.)

3. Medical clinics and agencies approved by the New Jersey Department of Health or appropriate State [agency] agencies outside of New Jersey may conduct diagnostic medical services. These agencies do not have to obtain Department of Education approval nor do district boards of education have to receive prior approval of the Department of Education to purchase [the] diagnostic medical services.

(d) District boards of education may purchase services listed under (c)1 and 2 above from approved clinics and agencies with the prior written approval of the Department of Education through its county office according to the following:

1. A request for approval to purchase services shall include the proposed terms of the contract[.];

2. The district board of education shall be notified of approval or disapproval within 30 calendar days of the request[.]; and

3. (No change.)

6:28-5.2 Approval procedures

(a) [Approval] Annual approval of clinics and agencies shall [include] require, but not be limited to, submission and evaluation of the following [criteria]:

1. A valid certificate of incorporation or certificate of formation[, certificate of trade, or business name.], Where appropriate, any licenses or permits required by [laws, regulations,] ordinances in effect within the state, county or municipality where the clinic or agency provides its services shall be provided;

2. (No change.)

3. A list of professional staff who will provide services which indicates each individual's certification or license and the function he or she will fulfill:

i. All staff shall be appropriately certified or licensed[.];

ii. All educational certificates shall be recorded with the Department of Education through the county office in which the clinic or agency is located[.];

iii. Professional staff employed by a clinic or agency who work full time for a district board of education shall not provide service for the clinic or agency during the hours of that individual's public school employment[.]; and

iv. An employee of a district board of education shall not provide service as an employee of a clinic or agency to a pupil who is the responsibility of his or her employing district board of education[.];

4. A description of the facility or facilities in which services shall be provided including assurances that the facility meets applicable building and administrative code standards;

5. (No change.)

6. Assurance of an adequate accounting system according to generally accepted accounting principles; and

7. (No change.)

(b) Any clinic or agency denied approval by the Department of Education may appeal the annual approval decision to the Commissioner of Education for a hearing according to N.J.A.C. 6:24. Such hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as [supplemented] implemented by N.J.A.C. 1:1).

SUBCHAPTER 6. SERVICES FOR NONPUBLIC SCHOOL PUPILS

6:28-6.1 General requirements

(a) [Each district board of education shall provide pupil evaluation to determine eligibility for special education and/or related services, compensatory education, supplementary instruction, home instruction and instruction in English as a second language for pupils enrolled in nonpublic schools located within the district.] This subchapter applies only to programs and services provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.

(b) The district of residence, as required by Federal law and regulation, shall maintain responsibility for providing a free, appropriate public education for pupils enrolled in nonpublic schools.

[(b)] (c) [Each] The district board of education in which the nonpublic school is located shall provide to nonpublic school pupils the programs and services required by this subchapter by itself, or through joint agreements with other district boards of education or through contracts with educational services commissions or with clinics and agencies approved under N.J.A.C. 6:28-5.

[(c)] (d) Specifications [of] for contracts to provide programs and services covered by this subchapter shall be approved by the county superintendent of schools.

6:28-6.2 Definitions

"Nonpublic school" means an elementary or secondary school, other than a public school, within the State, providing education in grades kindergarten through 12, or any combination of them, in which a pupil age five through 20 may fulfill compulsory school attendance and which complies with Title VI of the Civil Rights Act of 1964 (P.L. 88-352).

"Nonpublic school pupil" means any pupil who is enrolled full time in a nonpublic school. A pupil who boards at a nonpublic school shall be considered a resident of the New Jersey district in which the parent(s) resides.]

6:28-[6.3]6.2 Provision of programs and services

(a)-(i) (No change.)

(j) The district board of education in which the nonpublic school is located shall maintain all records of nonpublic school pupils receiving programs and/or services under this subchapter according to N.J.A.C. 6:3-2.

6:28-[6.4]6.3 Fiscal management

(a) Each district board of education shall provide programs and services under this subchapter [up to] at a cost not to exceed the amount of State aid [received for that year according to N.J.S.A. 18A:46A-1 et seq.] funds.

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

(d) Each district board of education shall receive State aid for programs and services required by this subchapter for the succeeding school year[, as determined by the Department of Education and] as available from appropriated funds for nonpublic school programs and services.

6:28-[6.5]6.4 End of the year report

(a) (No change.)

(b) The end of the year report shall include the numbers of nonpublic school pupils provided each program or service and such other information as may be required by the Department of Education.

**SUBCHAPTER 7. PROGRAMS BY EDUCATIONAL SERVICES COMMISSIONS, JOINTURE COMMISSIONS, REGIONAL DAY SCHOOLS, COUNTY SPECIAL SERVICES SCHOOL DISTRICTS, THE MARIE H. KATZENBACH SCHOOL FOR THE DEAF [AND], PRIVATE SCHOOLS FOR THE HANDICAPPED AND PUBLIC COLLEGE OPERATED PROGRAMS FOR THE HANDICAPPED**

**6:28-7.1 General requirements**

(a) Educational services commissions, jointure commissions, regional day schools, county special services school districts, the Marie H. Katzenbach School for the Deaf, [and] private schools for the **handicapped and public college operated programs for the handicapped** shall obtain prior written approval from the Department of Education to provide programs for educationally handicapped pupils through contracts with district boards of education.

1. Approval for the **initiation, expansion or change of a program** shall be based upon the criteria established by the Department of Education.

2. (No change.)

3. [Approval] **Annual approval** for private schools shall be obtained [annually] and shall include, but not be limited to, the provisions of N.J.A.C. 6:28-7.1(e)4, 5 and 6]3.

(b) (No change.)

(c) Programs for educationally handicapped pupils provided under this subchapter shall be operated according to this chapter.

1. Exceptions regarding pupil placement shall be made [with the prior written approval of the Department of Education through its county office in the county in which the responsible district board of education is located] **according to N.J.A.C. 6:28-4.6. Providers of programs under this subchapter shall maintain documentation of this approval.**

[2. Exceptions from all other requirements in this subchapter shall be made only with prior written approval from the Department of Education.]

(d) (No change.)

(e) **The residential component of an approved private school for the handicapped shall be approved by either the New Jersey Department of Human Services or by the appropriate government agency in the state in which the school is located.**

(f) **Out-of-state private schools for the handicapped shall be approved to provide special education programs by the department of education of the state in which they are located prior to applying for eligibility to receive New Jersey pupils. Exceptions to this requirement may be made only at the discretion of the Division of Special Education, the New Jersey Department of Education based on demonstrated compliance with N.J.A.C. 6:28 and 6:20-4.**

(g) **When an approved private school has a change in corporate structure or changes the structure of its governing body from that which was approved in the prior year, the composition of the board shall be according to N.J.A.C. 6:28-7.2(e)iii(1) and (2).**

[(e) Private schools wishing to provide services according to N.J.A.C. 6:28-5.1(c) shall comply with N.J.A.C. 6:28-5.]

**6:28-7.2 Approval procedures to establish or change a program**

(a) [At least six months prior] **Prior** to the [initiation of] **establishment or change** of a program for educationally handicapped pupils, an application shall be submitted to the Department of Education.

(b) (No change.)

(c) The Department of Education shall notify the applicant of its [approval] decision no later than [three months] **90 calendar days** after receipt of the application.

(d) An appeal of the decision [by staff of the Department of Education shall] **to deny approval may** be made to the Commissioner of Education according to N.J.A.C. 6:24.

(e) The application for approval to establish **or change** a program for educationally handicapped pupils shall include, but not be limited to:

[1. A statement of need indicating the number and age of educationally handicapped pupils to be served by category of handicap, and the existing programs and services available to these pupils within the geographic area to be served;]

1. **A survey of need indicating the number, age range and classifications of educationally handicapped pupils to be served. This survey shall include, but not be limited to:**

i. **A listing of local school districts surveyed, indicating the number of pupils in need of the proposed programs/services; and**

ii. **A listing of existing approved programs, within the geographical area to be served, which currently serve pupils with the same or similar educational needs;**

2. (No change.)

3. The projected program for each group of educationally handicapped pupils with the same handicapping condition including:

i.iii. (No change.)

iv. The nature and scope of the program and services to be offered and the number and type of educationally handicapped pupils to be served; and

v. A description of the proposed curriculum **including a statement of philosophy, goals, objectives and instructional strategies;**

4. A copy of the approval of the facility by the Department of Education through its county office **including certification of health and fire approval;**

5. [As] **An assurance that [health, safety and] necessary emergency procedures will be followed; and**

6. Additionally each private school shall submit:

i. (No change.)

ii. A copy of the certificate of incorporation; **and**

iii. The names of the members of the board of directors [which:]; **For initiation of a program this board of directors:**

(1) (No change.)

(2) May include the director of the private school in a [monitoring] **nonvoting capacity, but no other employee or officer of the school; and].**

[iv. All materials shall be submitted by January 1, 1985, and annually thereafter.]

**6:28-7.3 Annual approval procedures**

(a) **Annually each approved private school shall submit information including, but not limited to:**

1. **Program information:**

i. **Number of pupils to be served;**

ii. **Numbers and types of classes;**

iii. **Number of school days; and**

iv. **Daily hours in session;**

2. **Staffing information:**

i. **Staff roster including classes assigned and certification(s) held;**

3. **Fiscal information according to N.J.A.C. 6:20;**

4. **A copy of the certificates of health, fire, boiler inspections, occupancy and, if applicable, sewerage plant;**

5. **Assurance statement that necessary emergency procedures will be followed; and**

6. **An affidavit that its programs and services for the educationally handicapped are nonsectarian and in compliance with N.J.S.A. 18A:46-1 et seq., N.J.A.C. 6:28, the Education for All Handicapped Children Act-Part B, (20 U.S.C. 1400 et seq. and the Rehabilitation Act (USPL 93-112 Section 504).**

**6:28-[7.3]7.4 Responsibilities of district boards of education**

(a) The educational program of a handicapped pupil provided through contractual agreements as described in N.J.A.C. 6:28-7.1(a) shall be considered the educational program of the district board of education. The district board of education shall be responsible for the services required in N.J.A.C. 6:28-3.

[1. District boards of education may contract with program providers for the services required in N.J.A.C. 6:28-3.]

[i. A district board of education] **1. For pupils placed in programs described in N.J.A.C. 6:28-7.1(a), representative(s) of the program and the district board of education shall participate in any [decision-making] meeting(s) [unless this is documented not to be feasible] according to N.J.A.C. 6:28-2.3(f).**

[ii. The district board of education's child study team shall review any child study team reports developed under the contract according to N.J.A.C. 6:28-3.4(i).]

(b) The placement of an educationally handicapped pupil in a program as described in N.J.A.C. 6:28-7.1(a) shall be made only with the prior written approval of the Department of Education through its county office. **Providers of programs under this subchapter shall maintain documentation of this approval.**

1. (No change.)
2. Prior to placement in a program [in New Jersey], a representative of the district board of education and, if possible, the parent(s) shall visit the school.
3. (No change.)
4. When a district board of education is able to demonstrate to the Department of Education through its county office that the individualized education program of an educationally handicapped pupil cannot be provided by a public program or private day school program, the pupil may be placed in [a] **an approved residential private school** which shall be at no cost to the parent(s). The district board of education shall be responsible for special education costs, room and board.

5. Placement of an educationally handicapped pupil in [a] **an approved residential private school** by a public agency, other than the district board of education, shall be subject to the rules governing such agencies and to this chapter. The district board of education shall pay the [day] **nonresidential** special education costs.

- i. (No change.)
- ii. The chief school administrator or **his or her** designee shall participate with the public agency in the placement decision [when a] **if the district board of education is [expected] to be responsible for the special education costs.**

(c) **If the approval of a private school for the handicapped is removed, a district board of education having an educationally handicapped pupil placed therein, shall immediately begin seeking an alternative, appropriate placement for that pupil.**

#### 6:28-[7.4]7.5 Provision of programs

(a) An educational program provided under this subchapter shall conform to the requirements of N.J.A.C. 6:28-4 and to the pupil's individualized education program. [Physical education, industrial arts, fine arts, home economics, health services and other educational services shall be provided on a basis comparable to that provided in the pupil's local school district.]

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

(d) **A provider of programs under this subchapter shall notify the Department of Education 90 calendar days prior to ceasing operation.**

#### 6:28-[7.5]7.6 Termination or withdrawal from an educational program

(a) Prior to the termination or withdrawal of any educationally handicapped pupil from an approved program described in N.J.A.C. 6:28-7.1(a), there shall be an individualized education program review conference **according to N.J.A.C. 6:28-3.6(j)** which shall include participation of appropriate personnel from the receiving school [and the pupil's parent(s)]. Fifteen calendar days prior to [written notice of] termination or withdrawal **written notice** shall be [made] **given** by the parent(s), the district board of education or the school providing the program to the other parties.

(b) [When an] **An educationally handicapped pupil [completes his or her individualized education program, the pupil shall receive a diploma if the requirements of N.J.A.C. 6:28-[4.4]4.8 are met.**

#### 6:28-[7.6]7.7 Fiscal management

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

(d) Transportation for pupils in residence at the Marie H. Katzenbach School for the Deaf shall be [the responsibility of the Katzenbach School] **according to N.J.A.C. 6:78-1.3.**

[(e) Annual program budgets shall be submitted for approval to the Department of Education by each provider on forms distributed by the department.]

[(f)] (e) All [providers under this subchapter] **approved private schools for the handicapped** shall submit a certified audit to the De-

partment of Education [at the end of each school year] **by November first, for the prior school year, according to N.J.A.C. 6:20.**

#### 6:28-7.[7]8 Records

(a) All providers under this subchapter shall conform to the requirements of N.J.A.C. 6:3-2 pertaining to pupil records. In addition:

1. (No change.)
  2. Requests for access to pupil records by authorized organizations, agencies or persons as stated in N.J.A.C. 6:3-2 shall be directed to the chief school administrator or **his or her** designee of the local school district having responsibility for the handicapped pupil.
  3. (No change.)
- b. (No change.)

#### 6:28-7.9 Monitoring and corrective action

(a) **The Department of Education shall monitor approved private schools for the handicapped according to N.J.A.C. 6:28-9.1. On site monitoring shall be conducted at least every five years.**

(b) **When an approved private school is determined to be in non-compliance, Department of Education actions may include, but are not limited to:**

1. **The Department of Education may issue a conditional approval status when noncompliance is demonstrated in such areas as staff certification, facilities approval, business services according to N.J.A.C. 6:20-4 or submission and/or implementation of the corrective action plan.**

i. **An approved private school which is issued a conditional approval status may not accept new pupils;**

2. **The Department of Education may refuse to grant annual approval when chronic or systemic noncompliance is demonstrated; and**

3. **The Department of Education may immediately remove program approval when it is documented that the health, safety or welfare of the pupils is in danger.**

(c) **An appeal of the actions of the Department of Education may be made to the Commissioner of Education according to N.J.A.C. 6:24.**

### SUBCHAPTER 8. PROGRAMS OPERATED BY [OTHER] THE DEPARTMENTS OF [NEW JERSEY STATE GOVERNMENT] CORRECTIONS AND HUMAN SERVICES

#### 6:28-8.1 General requirements

(a) The requirements of this chapter shall apply to all educational programs provided **under N.J.S.A. 18A:7B** for handicapped pupils by [a department] **the Departments of [New Jersey State government, except as otherwise provided in this subchapter] Corrections and Human Services. These requirements do not apply to Graduate Equivalent Degree (GED), adult continuing education or college degree programs.**

[1. This shall include but not be limited to the Department of Corrections, the Department of Higher Education and the Department of Human Services.

2. This shall not include the Department of Education.]

(b) All educationally handicapped pupils shall receive an educational program **and/or related services** based on an individualized education program. A pupil who has an individualized habilitation plan or an individual treatment plan, as defined by the Department of Human Services, shall have the individualized education program incorporated into the plan.

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

(f) Educational programs and services shall be provided for each pupil between the ages of three and 21 who does not hold a high school diploma **or who is not enrolled in a Graduate Equivalent Degree, adult continuing education or a college degree program.**

(g) Attendance is compulsory for all pupils except for a pupil age 16 or above who **explicitly** waives this right. [A] **Such a waiver may be revoked at any time by the pupil. For a pupil below the age of 18, a waiver is not effective unless accompanied by parental consent. Educationally handicapped pupils may re-enroll according to N.J.A.C. 6:28-2.1(b).**

(h) [An] **All education programs with the exception of home instruction shall be scheduled for at least four hours per day and no fewer than 180 days each year.**

(i) (No change.)

(j) **When a pupil enters a State facility:**

1. **If the pupil is educationally handicapped and an immediate review of the classification and individualized education program cannot be conducted, the pupil shall be placed in a program consistent with the goals and objectives of the current individualized education program for a period not to exceed 30 calendar days; or**

2. **If the pupil is not currently classified as educationally handicapped, or if the State facility does not have current school records, the State facility shall review the pupil's educational status within 30 calendar days to determine if the pupil is potentially educationally handicapped and if referral to the child study team is required.**

[(j)] (k) Each State facility shall develop a special education plan according to N.J.A.C. 6:28-1.2 which additionally shall include:

1.-2. (No change.)

(1) **Annually the responsible board of education shall be notified of the pupil's progress toward the local and State high school graduation requirements according to N.J.A.C. 6:8-7.**

(m) **District boards of education shall grant State endorsed diplomas for pupils enrolled in State facilities in accordance with N.J.A.C. 6:8-7 and 6:28-4.8(a).**

#### 6:28-8.2 Pupil records

(a) (No change.)

(b) **[All] Prior to exiting a State facility, all educational records [must] shall be transmitted to the responsible district board of education, as indicated by N.J.S.A. 18A:7B-12, in order to assure credit for work completed by the pupil. [District boards of education shall grant appropriate credit and diplomas for educational work completed by pupils enrolled in State facilities.]**

(c) **In the case of pupils with no identifiable district board of education, records shall be maintained by the Department of Corrections or Department of Human Services according to N.J.A.C. 6:28-2.9.**

#### 6:28-8.3 Procedural safeguards

(a) A due process hearing request may be made to the Department of Education for a pupil confined in a residential facility operated by or under contract to a department of State government on issues of classification on the components of an education program or an educational placement.

(b) A request for an administrative review shall be made directly to the appropriate department of State government.

1. The Department of Corrections and the Department of Human Services shall develop written administrative review procedures which shall be approved by the Department of Education.]

(a) **A due process hearing request for a pupil in a State facility shall be made to the Department of Education according to N.J.A.C. 6:28-2.7. Attempts to resolve conflicts prior to a request for due process are encouraged; however a request for mediation or administrative review is not a prerequisite to a hearing.**

(b) **A request for mediation may be made directly to the Department of Corrections or the Department of Human Services.**

1. **The Department of Corrections and the Department of Human Services shall adhere to written mediation procedures approved by the Department of Education.**

(c) Mediation efforts by the Department of Education as described in N.J.A.C. 6:28-2.6 may be requested for handicapped pupils.

(d) (No change.)

(e) **[A handicapped pupil shall not be suspended or expelled from an educational program for manifestations or consequences of the pupil's handicap, except on an emergency basis to prevent imminent danger of injury to the pupil or others.] Discipline of educationally handicapped pupils shall be according to N.J.A.C. 6:28-2.8.**

(f) **Surrogate parents shall be appointed according to N.J.A.C. 6:28-2.2.**

#### 6:28-8.4 Provision of programs

(a) (No change.)

(b) **A [State] residential State facility may recommend placement of a pupil in a local school district if the pupil is capable of participating in an educational program offered by a district board of education. Documentation of attempts to place the pupil in the least**

**restrictive environment according to N.J.A.C. 6:28-2.10 shall be stated in the pupil's individualized educational program. [The district board of education may accept or reject the pupil. If accepted, tuition] Tuition shall be paid by the State facility to the district board of education where the pupil is placed.**

(c) **[Educational certificates for professional staff] All professional staff shall be appropriately certified to function in their area of assignment and their certification shall be on file in the respective department's education office [or] and in the appropriate county office of the Department of Education.**

1. (No change.)

2. **All other educational staff shall hold the certification determined appropriate by the [directors of the offices of education in the departments operating educational programs or by the appropriate county office of the] Department of Education.**

[3. The appropriateness of certification will be reviewed annually by the Department of Education.]

3. **When a class has educationally handicapped as well as nonhandicapped pupils, the assigned teacher shall hold certification as teacher of the handicapped.**

(d) **Class size for all pupils enrolled in State-operated programs shall not exceed the following:**

1. (No change.)

2. **Child treatment center or psychiatric hospital—[8] eight pupils;**

3. (No change.)

4. **Day training center—[9] nine pupils per classroom with a pupil to staff ratio of three to one; and**

5. (No change.)

[6. Programs operated by the Department of Higher Education—according to N.J.A.C. 6:28-4.2.]

(e) **Day training programs shall be provided in the following manner:**

1. **The Department of Human Services shall provide educational programs and related services for pupils classified as eligible for day training in State-operated or contracted facilities[.];**

2. **A day training program is responsible for [carrying out] implementing the individualized education program[.] which shall be developed by the district board of education agency with input from a curriculum consultant from the day training center;**

3. **In classes for pupils classified as eligible for day training, the age range may exceed four years[. If a pupil is placed in a class in which he or she is not within the four-year age range of the other pupils,] only if the rationale for placement [shall be] is noted in the pupil's individualized education program[.];**

4. **An educational program for pupils classified as eligible for day training in a State residential facility shall be commensurate with those in a day training center[.]; and**

5. (No change.)

(f) **For those pupils placed in day training centers, the district board of education shall:**

1. **Develop the basic plan section of the individualized education program with participation of the curriculum consultant from the proposed day training facility;**

2. **Conduct the annual review of the individualized education program according to N.J.A.C. 6:28-3.6(j) and include the participation of the teaching staff member from the day training facility who is familiar with the pupil; and**

3. **Conduct the reevaluation according to N.J.A.C. 6:28-3.7(j) and provisions of this subchapter.**

(g) **For those pupils placed in day training centers, the Department of Human Services shall:**

1. **Provide an opportunity for the teacher having knowledge of the pupil to contribute to the development of the instructional guide section of the individualized education program in accordance with N.J.A.C. 6:28-3.6(i); and**

2. **Provide the educational program and all related services as specified in the individualized education program.**

[(f)] (h) **An educational plan [should] shall be developed by the approved facility for each school age pupil leaving a Department of Corrections or Department of Human Services education program which shall include:**

1. [The current individualized education program or a description of the general education program.] **Information necessary to formulate an appropriate educational program when the pupil returns to a local district or attends any other educational program beyond the facility placement.**

2. [Any other educational information necessary to formulate an appropriate educational program when the pupil returns to a local district.] **An individualized education program for educationally handicapped pupils; or for non-educationally handicapped pupils, a description of the pupil's general education program; and**

3. **Specifics for the implementation of the plan including:**

i. **Contact personnel;**

ii. **Program recommendations;**

iii. **Timelines for implementation; and**

iv. **Personnel responsible for implementation.**

(i) **When a pupil in a residential State facility is in need of home instruction according to N.J.A.C. 6:28-4.5(b), the State facility shall implement the program. Pupils may receive home instruction beyond 60 calendar days only with written approval of the Department of Education through its county office.**

(j) **When a pupil in a day training center is in need of home instruction according to N.J.A.C. 6:28-4.5(b), the center shall implement the program. When home instruction extends beyond 60 calendar days, the Department of Human Services, Office of Education shall notify the responsible district board of education. The district shall review the pupil's current educational classification. Pupils may receive home instruction beyond 60 calendar days only with written approval of the Department of Education through its county office.**

6:28-8.5 Eligibility to receive State funds

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

[(c) The Department of Education shall forward the first-quarter State Facilities Education Act funds to the Department of Corrections and the Department of Human Services by July 1. All subsequent funding for the fiscal year shall be contingent upon acceptance of the special education plan or annual update by the Department of Education.

(d) The determination of the district of residence for funding purposes for pupils in programs operated by the Department of Corrections or the Department of Human Services shall be according to N.J.S.A. 18A:7B-12.]

[(e) (c) Annually the Department of Corrections and the Department of Human Services shall submit a composite education program budget for all programs and services under its jurisdiction in accordance with N.J.S.A. 18A:7B-12.

6:28-8.6 Program review and approval

(a) Annually the Department of Education shall review all educational programs provided for educationally handicapped pupils by a department of State government for compliance with New Jersey Statutes Annotated, New Jersey Administrative Code, and adherence to their approved special education plan and budget.

(b) (No change.)

## SUBCHAPTER 9. MONITORING, CORRECTIVE ACTION AND COMPLAINT INVESTIGATION

6:28-9.1 Monitoring and corrective action

(a) (No change.)

(b) The monitoring process [shall] **may include**, as necessary] **but is not limited to:**

1. Review of data and reports;

2. [Conducting on] **On-site visits;**

3. Comparison of a sample of individualized education programs with the programs and services offered; **and**

4. Audit of Federal and State funds.

(c) (No change.)

(d) If the public or private agency receives a review report that indicates noncompliance, [an improvement] **a corrective action plan shall be developed by the agency and submitted to the Department of Education for approval.**

(e) The [improvement] **corrective action plan shall be submitted according to a format provided by the Department of Education and shall include, but not be limited to, the following:**

1. Objectives and strategies for correcting each non-compliance item cited, including resources needed; **and**

2. [Target dates for correction of] **Dates by which noncompliance will be corrected.**

(f) The Department of Education shall review the [improvement] **corrective action plan and notify the agency if it is acceptable.**

(g) When [an improvement] **a corrective action plan is not submitted, [or] found unacceptable or not implemented, the Department of Education shall notify the agency of the [sanctions] actions that it intends to [apply] take.**

(h) An appeal of the [decision by staff of the Department of Education shall] **denial of approval of a corrective action plan, imposition of sanctions or determination of noncompliance may be made to the Commissioner of Education according to N.J.A.C. 6:24.**

(i) **The Department of Education shall maintain monitoring records for a period of at least five years.**

6:28-9.2 Complaint [procedures] investigation

(a) The Director of the Division of Special Education or his or her designee(s) shall be responsible [for implementing the procedures to] for reviewing, [investigate and take] **investigating and taking action on any written complaint of substance regarding the provision of special education and/or related services covered under this chapter. The Division of Special Education in conjunction with the county office of education, shall complete an investigation within 60 calendar days after a written complaint is received.** [The procedures may include:

1. Referral by the director to the county office of the Department of Education for fact finding, and if possible, a negotiated settlement;

2. Monitoring by the Division of Special Education according to N.J.A.C. 6:28-9.1.

(b) A written report of the actions taken by the Division of Special Education and the results of these actions shall be completed within 60 calendar days of the receipt of the written complaint. The report shall be sent to all parties involved.]

(b) **The investigation may include, but not be limited to:**

1. **Review of policies and procedures;**

2. **Review of pupil record(s);**

3. **Observation of special class programs; and**

4. **Interview(s) of complainants, staff and parents.**

(c) **A report of findings, conclusions and, when warranted, the required corrective actions shall be sent to the parties involved.**

(d) **Upon receipt of the complaint investigation report, either party may appeal the findings and/or recommendations by filing a petition with:**

1. **The Commissioner of Education in accordance with N.J.A.C. 6:24; or**

2. **The United States Secretary of Education in accordance with 34 C.F.R. 76.781.**

## SUBCHAPTER 10. EARLY INTERVENTION PROGRAMS

6:28-10.1 General requirements

(a) This subchapter applies to all agencies that receive public funds through contracts from the Department of Education for the provision of early intervention programs to handicapped children between birth and age three. Early intervention programs shall [be comprehensive, interdisciplinary programs that] **address a child's education, health and human service needs within the framework of the family through an individualized family service plan according to P.L. 99-457.**

(b) Early intervention programs shall be [approved annually] **administered by the Department of Education as the lead agency in collaboration with the Departments of Health and Human Services and the Developmental Disabilities Council.**

(c) [Approved early] **Early intervention programs that receive public funds through contracts shall be funded to the extent provided by appropriations to the Department of Education for these purposes [and shall conform to contract requirements established by the Department of Education in consultation with the Departments of Health and Human Services].**

(d) The Department of Education, in consultation with the Departments of Health and Human Services and the **Developmental Disabilities Council**, shall monitor and review annually the programs and services of each [approved] **funded** early intervention program according to N.J.A.C. 6:28-9.

(e) **An application for funding of an early intervention program shall be submitted annually to the Department of Education.**

(f) **Eligibility for funding and level of funding shall be determined annually by the Department of Education in consultation with the Departments of Health and Human Services and the Developmental Disabilities Council.**

(g) **To be eligible for funding, agencies shall comply with the program and fiscal criteria in the application for early intervention funds and with the contract requirements.**

(h) **An appeal of the approval or funding decision of the Department of Education may be made to the Commissioner of Education according to N.J.A.C. 6:24.**

(i) **Personnel employed in early intervention programs shall be appropriately certified or licensed.**

(j) **Facilities for early intervention programs shall comply with all local health and safety codes. Each facility site shall be inspected and approved in accordance with county and local building, fire and health requirements.**

(k) **Funded early intervention programs shall comply with all pupil record requirements according to N.J.A.C. 6:3-2.**

6:28-10.2 [District board of education responsibilities] (**Reserved**)

[(a) Each district board of education shall have a procedure to ensure that parents of all potentially eligible children within its jurisdiction are provided information regarding early intervention programs. This procedure shall include, but not be limited to, a variety of activities to disseminate information to the community.

(b) When a child who has been enrolled in an early intervention program becomes age three as defined in N.J.A.C. 6:28-1.3, the district board of education shall consider the child as identified according to N.J.A.C. 6:28-3.2 and shall initiate referral procedures.]

6:28-10.3 [Approval process] (**Reserved**)

[(a) At least six months prior to the initiation of an early intervention program, an application shall be submitted to the Department of Education.

(b) An application for funding of an early intervention program shall include:

1. A program plan which incorporates the following:
  - i. A statement of need indicating the number of children to be served and the existing programs and services available to them;
  - ii. The screening procedures;
  - iii. The assessment procedures;
  - iv. The intervention plan;
  - v. A family involvement plan;
  - vi. The personnel development policies;
  - vii. A procedure for interagency coordination;
  - viii. The program evaluation process.
2. Projected number of personnel by title and certification;
3. The administrative policies and procedures;
4. A copy of the approval of the facility by the Department of Education through its county office;
5. A copy of procedures for health, safety and necessary emergency procedures;
6. An assurance that the fiscal management system includes:
  - i. An annual written budget; and
  - ii. An annual audit performed by a certified public accountant;
7. A copy of the written policy describing compliance with all pupil record requirements according to N.J.A.C. 6:3-2;
8. A copy of the procedure used to notify appropriate district boards of education of the need for services for a child age three;
9. For each private agency, an affidavit that the early intervention program is nonsectarian; and
10. All other information required for approval.

(c) The Department of Education, in consultation with the Departments of Health and Human Services, shall review and determine eligibility for funding of an early intervention program.

(d) The Department of Education shall notify the early intervention program of the approval decision no later than three months after receipt of the application.

(e) An appeal of the decision by staff of the Department of Education shall be made to the Commissioner of Education according to N.J.A.C. 6:24.]

SUBCHAPTER 11. SPECIAL EDUCATION PILOT PROJECT

6:28-11.1 General provisions

(a) The New Jersey Department of Education has developed the Plan to Revise Special Education in New Jersey (Plan). The Plan is a major initiative of the [department] **Department** and includes a set of recommendations designed to improve the organization and delivery of special education programs and services to handicapped pupils. The Plan is also designed to build the capacity in regular education to serve nonhandicapped pupils with mild learning problems in regular education.

(b) The Plan to Revise Special Education in New Jersey is being implemented as a pilot project operated by the Department of Education in selected local districts under the authority of N.J.S.A. 18A:7A(5)i [during the 1988-1990 school years].

(c) This subchapter shall replace N.J.A.C. 6:28-3.1 through 3.5 and N.J.A.C. 6:28-4.1(a) through [e](d) and 4.2 **through 4.6** and shall apply only to those districts selected by the Department of Education to pilot the Plan. All other provisions of N.J.A.C. 6:28 shall apply to such districts except as specifically noted in this subchapter.

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

6:28-11.2 School resource committees

(a) All pilot district boards of education shall establish at least one school resource committee in each of its regular schools. The school resource committee is a standing committee whose purpose [it] is to assist teachers with strategies for educating non-handicapped pupils with learning and/or behavior problems in regular education. Pilot district boards of education shall develop procedures for requesting the services of the school resource committee, implementing committee recommendations and communicating with parents.

1.-3. (No change.)

(b)-(e) (No change.)

6:28-11.3 Child study teams

(a) A child study team is an interdisciplinary group of appropriately certified persons who shall:

1. Evaluate pupil instructional needs **after parental consent has been received** and [determine] **participate in the determination** of eligibility for special education and/or related services for pupils referred as potentially **educationally** handicapped;

2.-3. (No change.)

4. Provide preventive and support services to nonhandicapped pupils; **and**

5. Provide services to the regular education staff which include:

i.-iii. (No change.)

iv. The design, implementation and evaluation of techniques to prevent and/or remediate educational difficulties; **and**

v. (No change.)

(b) A child study team shall consist of a learning disabilities teacher-consultant, a school psychologist, a school social worker and a **speech correctionist** or speech-language specialist. All members of the child study team shall be employees of the pilot district board of education, have an identifiable apportioned time commitment to the local school district and be available during the hours when pupils are in attendance.

(c) (No change.)

(d) **At least one member of the child study team shall be knowledgeable about placement options for educationally handicapped pupils according to N.J.A.C. 6:28-4.**

6:28-11.4 Identification

(a) Each pilot district board of education shall adopt written procedures for [screening and] identifying those pupils [between the] ages [of] three [and] **through 21** who reside within the local school district, may be educationally handicapped and are not receiving

special education and/or related services as required by this chapter. Children below the age of three shall be identified, located and evaluated through programs operated by or through contract with the Department of Education.

1.-2. (No change.)

(b) [A newly enrolled pupil who is identified pursuant to (a) above, but not classified as educationally handicapped by the school district of previous enrollment, shall be placed in a regular public school program. If the chief school administrator, after consultation with the child study team, determines that such placement of the pupil may do serious harm to the pupil or others, the pupil may be placed on home instruction for a period not to exceed 30 calendar days pending child study team evaluation and determination of special education eligibility. Simultaneously with such placement of a pupil on home instruction, the chief school administrator shall initiate referral to the child study team according to N.J.A.C. 6:28-11.5(a) through (f).] **When an educationally handicapped pupil transfers into a pilot district, placement shall be according to N.J.A.C. 6:28-4.1(h).**

(c) **For a child who has been enrolled in an early intervention program, who will be age three according to N.J.A.C. 6:28-1.3 in the following school year and who is identified to the district board of education prior to June 1, the district board of education shall obtain parental consent, determine eligibility and, if appropriate, develop an individualized education program. This shall be completed not later than the opening of school in the following school year.**

6:28-11.5 Referral

(a) Prior to any decision regarding referral of a pupil to a child study team for determination of eligibility for special education programs or services, a certified staff member shall request the school resource committee to recommend interventions in the regular public school program to address educational problems. The following exceptions to this provision apply:

1. School resource committee intervention is not required for a pupil whose educational problems are such that direct referral to the child study team can be supported[.]; **and**

2. [Parents] **The parent(s)** may refer this child to the child study team directly. The child study team shall determine the appropriateness of any such referral.

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

(g) When a parent identifies a child three to five as potentially handicapped, the district board of education shall use a screening procedure **which includes, at a minimum, an observation of the child to determine if the child should be referred directly to the child study team for comprehensive evaluation. Screening shall be completed within 30 calendar days of parental request.**

[(h) When a child who has been enrolled in an early intervention program attains the age of three, as defined in N.J.A.C. 6:28-1.3, the pilot district board of education shall accept the child as identified and proceed with referral directly to the child study team.]

[(i)](h) When the Division of Youth and Family Services, Department of Human Services, identifies a potentially educationally handicapped pupil for whom a local school district is responsible, the district shall accept the pupil's identification by the Division of Youth and Family Services and request parental consent to refer the pupil directly to its child study team according to this subchapter.

[(j)](i) Pupils referred solely for speech [and] - language services may be referred directly to the speech-language specialist and need not be reviewed by the entire child study team.

(j) **Vision screening shall be conducted by the school nurse for every pupil referred to the child study team.**

6:28-11.6 Comprehensive evaluation

(a) (No change.)

(b) The evaluation plan shall include:

1. The specific information to be obtained [, and];

2. The child study team members who will participate in the evaluation.

i.-iii. (No change.)

iv. Data collection shall include, but not be limited to, an interview with the referring teacher and parent, if direct referral is made by the parent(s)[.];

3. (No change.)

4. The language(s) or method of communication to be used in the evaluation process; **and**

5. (No change.)

(c) [A copy of the evaluation plan shall be sent to the pupil's parent(s).] **The parent(s) shall be provided a copy of the evaluation plan and notice according to N.J.A.C. 6:28-2.3.**

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

(f) All evaluations specified in this chapter shall:

1.-2. (No change.)

3. Be conducted in the dominant language or method of communication determined in the evaluation plan; [and]

4. Consider the pupil's socio-cultural background and adaptive behavior in home, school and community[.]; **and**

5. **Result in a written report which shall be dated and signed by the individual who originated the data.**

(g)-(h) (No change.)

(i) Eligibility assessment for speech [and] - language services shall be conducted by the **speech correctionist** or speech-language specialist and others as appropriate and include a written report from the pupil's teacher.

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

(l) A reevaluation [to determine the status of each educationally handicapped pupil] **and individualized education program, if appropriate, shall be [conducted at least every three years] completed within three years of the date of the previous classification.** Reevaluation shall be conducted more often if conditions warrant[.] **or if the pupil's parent(s) or teacher requests the reevaluation.**

1. (No change.)

2. The full child study team shall design [a] **an [re]evaluation plan as described in this section. The parent(s) shall be [notified in writing] provided with a copy of the [re]evaluation plan and notice according to N.J.A.C. 6:28-2.3.**

3. (No change.)

(m) (No change.)

6:28-11.7 Determination of eligibility

(a) When an evaluation is completed, members of the child study team who participated in the assessment and parent(s) shall meet with the school principal and referring staff member(s), if they choose to participate, in order to:

1.-2. (No change.)

3. Determine eligibility for special education and/or related services according to N.J.A.C. 6:28-11.8; **and**

4. (No change.)

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

6:28-11.8 Eligibility criteria

(a) (No change.)

(b) The pupil must meet both standard and functional criteria in order to satisfy a domain or an impact area.

1.-2. (No change.)

3. Functional assessment shall include:

i. A minimum of one structured observation of not less than 20 minute duration by each of two child study team members as required for each domain or area listed in [N.J.A.C. 6:28-11.8] **this section;**

ii.-v. (No change.)

(c) The following special considerations shall apply to eligibility criteria for preschool pupils:

1. Preschool evaluations need not use the school setting as the reference for meeting the functional criteria. In such cases the home, institution or community setting shall be substituted[.];

2. The learning domain in (d)2 below shall not be required[.];

3. The child study team must determine that the pupil requires a full-time special education program[.]; **and**

4. The criteria for educational impact need not be demonstrated.  
(d) The following criteria are established for each domain:

1. Cognitive criteria are as follows:

i. Standard criteria: The pupil's general level of cognitive functioning on a standardized intelligence test administered by a school

psychologist shall be at least two standard deviations below the norm[.];

ii. Functional criteria: The pupil's general level of cognitive functioning within the school setting shall be significantly discrepant from the typical pupil and/or appropriate norms. This cognitive deficit shall include an inability to demonstrate personal independence and social responsibility according to age and sociocultural group expectations and any of the following: an inability to generalize/transfer information skills and concepts; an inability to appropriately solve problems; or an inability to formulate appropriate judgments and inferences[.];

iii. Assessment areas for the cognitive domain shall include:

(1) The pupil's general level of cognitive functioning[.];

iv. Assessment shall be by at least:

(1) A school psychologist; and

(2) One other child study team member[.];

2. Learning criteria are as follows:

i.-iii. (No change.)

iv. Assessment shall be by at least:

(1) (No change.)

(2) The learning disabilities teacher-consultant[.];

3. Social/emotional criteria are as follows:

i. Standard criteria: The pupil demonstrates a pervasive or chronic inability to build or maintain satisfactory relations with peers, teachers and/or school personnel that severely interferes with one or other pupils' social/emotional growth within the school setting[.];

ii. Functional criteria: The pupil shall demonstrate a pervasive or chronic inability to build or maintain satisfactory relations with peers, teachers and/or school personnel that severely interferes with the pupil's own or with others' social/emotional growth within the school setting. The behavior is significantly discrepant from the typical pupil and/or age appropriate norms[.];

iii. Assessment areas for the social/emotional domain shall include:

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

(4) Atypical behavior[.]; and

iv. Assessment shall be by at least:

(1) (No change.)

(2) A school social worker[.];

4. Physical criteria are as follows:

i. Standard criteria: The pupil has received a diagnosis describing a physical condition which interferes with the pupil's ability to function independently in a school setting[.];

ii. Functional criteria: The pupil's physical condition requires strategies, materials and/or equipment in order to compensate for the physical condition and to be able to function in the school environment[.];

iii.-iv. (No change.)

5. Sensory-hearing criteria are as follows:

i. Standard criteria: The pupil's performance on an audiological examination shall indicate a loss in the speech range of 30 decibels or greater in the better ear when aided[.];

ii. Functional criteria: The pupil's auditory functioning requires special strategies, materials and/or equipment in order to compensate for the auditory deficit and to be able to function in the school environment[.];

iii.-iv. (No change.)

6. (No change.)

7. Communication criteria are as follows:

i.-iii. (No change.)

iv. Assessment shall be by at least:

(1) A **speech correctionist** or speech-language specialist; and

(2) One other child study team member.

v. Pupils referred solely for speech [and] - language services shall require at least the evaluation and observation of the **speech correctionist** or speech-language specialist and information from the pupil's teacher.

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

(g) When the parent of a pupil eligible for special education and/or related services requests a classification designation as stated in N.J.A.C. 6:28-3.5[(e)](c), the child study team shall select an ap-

propriate classification type based upon the evaluation completed according to N.J.A.C. 6:28-11.6 and 7 and any specialist required by N.J.A.C. 6:28-3.5[(e)](c).

6:28-11.9 Individualized education program

(a) The individualized education program for each educationally handicapped pupil shall consist of a basic plan and an instructional guide, pursuant to N.J.A.C. 6:28-3.6 and this subsection.

1. (No change.)

2. The basic plan of the individualized education program shall conform with N.J.A.C. 6:28-3.6(a), (b), (c) and (e) and shall also include the following:

i.-iii. (No change.)

3. The instructional guide shall describe both the learning characteristics of the pupil and the related instructional characteristics of the pupil's learning environment. The instructional guide shall include those requirements stated in N.J.A.C. 6:28-3.6(f), (g), (h), and (i) and the following:

i.-iv. (No change.)

(b) Pupils determined to require placement in a [county] day training facility shall be classified as eligible for day training according to N.J.A.C. 6:28-3.5[d](c)5iii based upon the child study team evaluation completed under N.J.A.C. 6:28-11.6(g).

(c) Annually, or more often if necessary, the case manager, parent(s), teacher(s), [and] the pupil, if appropriate, and other individuals at the discretion of the parents, shall meet to review and revise the instructional guide and the basic plan of the individual education program as specified in this subchapter.

1.-3. (No change.)

(d) [A copy of the individualized education program shall be signed by members of the child study team who participated in its development and] **Documentation of those persons who participated in the development of the individualized education program shall be maintained and a copy of the individualized education program shall be provided to the parent(s) in their native language according to N.J.A.C. 6:28-2.4.**

(e) **When the parent(s) declines participation in an individualized education program meeting or is in disagreement with the recommendations, the remaining participants shall develop a written individualized education program in accordance with this section. Initial implementation of special education cannot occur until consent is obtained or a hearing decision is issued. For other than initial implementation of special education, the parent(s) shall be provided written notice according to N.J.A.C. 6:28-2.3.**

6:28-11.10 Provision of programs

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

(d) Appropriate facilities shall be provided for educationally handicapped pupils according to N.J.A.C. 6:22[-1 et seq].

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

6:28-11.11 Program options

(a) (No change.)

(b) The following program criteria shall be met:

1. Speech [and]-language services provided to educationally handicapped pupils shall be in addition to the regular instructional program and shall meet the following criteria:

i. Speech [and]-language services may be given individually or in groups not to exceed three pupils.

ii. Speech [and]-language services shall be provided by a certified **speech correctionist** or speech-language specialist.

2. Part-time special education programs shall provide individual and small group instruction to pupils eligible to receive part-time special education and shall meet the following criteria:

i.-v. (No change.)

vi. The number of pupils provided replacement instruction at any given time shall not exceed six in an elementary group or eight in a secondary group. The group size in out-of-class replacement instruction may be increased by one-third with the addition of a classroom aide by obtaining the approval of the Department of Education through its county office. The group size in secondary out-of-class replacement instruction may be doubled when a regular

teacher joins the resource center teacher in instructing the group. No more than one content area may be taught in an individual period of replacement instruction. **Age span shall not exceed four years.**

- vii.-viii. (No change.)
- 3. (No change.)

6:28-11.12 Full-time class types

- (a)-(e) (No change.)
- (f) Severe behavior handicap class types shall meet the following requirements:

- 1.-6. (No change.)
- 7. Required related services shall include:
  - i. (No change.)
  - ii. **Speech[/]-language [therapy] services.**
- (g) (No change.)
- (h) Severe cognitive handicap type classes shall meet the following requirements:

- 1.-6. (No change.)
- 7. Required related services shall include:
  - i. **Speech[/]-language [therapy] services;**
  - ii.-v. (No change.)
- (i) Auditory handicap type classes shall meet the following requirements:

- 1.-6. (No change.)
- 7. Required related services shall include:
  - i. (No change.)
  - ii. **Speech[/]-language [therapy] services.**
- (j) Auditory/visual handicap type classes shall meet the following requirements:

1.-2. (No change.)  
 3. Instruction shall be provided by a certified teacher of the handicapped who is certified as one of the following:

- i. [teacher]**Teacher** of the deaf/hard of hearing; or
- ii. [teacher]**Teacher** of the blind/visually impaired.

- 4.-6. (No change.)
- 7. Required related services shall include:
  - i.-ii. (No change.)
  - iii. **Speech[/]-language [therapy] services;**
  - iv.-vi. (No change.)
- (k)-(m) (No change.)

(n) In secondary full-time class types, enrollment may be increased by one-half the maximum instructional group size allowed for that specific class type as noted in [N.J.A.C. 6:28-11.12](c) **above**. For instructional purposes, no group shall contain more than the maximum number for that class type. Pupils may be of only one class type.

- (o) (No change.)

6:28-11.13 Program approval

(a) Annually, each pilot district shall apply for approval of its special education program by completing a report which describes:

- 1.-2. (No change.)
- 3. Profiles of each of the full-time classes it operates which include:
  - i.-ii. (No change.)
- (b)-(d) (No change.)

(e) Any exceptions regarding the requirements of these operational specifications shall be made only with prior written approval of the Department of Education through its county office and the Division of Special Education **according to N.J.A.C. 6:28-4.6 and the following[.];**

1. Pupils received by the pilot district or placed in out-of-district facilities such as, but not limited to, other New Jersey public schools, approved private schools for the handicapped within or outside of New Jersey, and State-operated programs shall be granted [a waiver] **an exception** regarding classification by the Department of Education through its county office.

2. The [waiver] **exception** shall establish the pupil's classification as that of the type of class program which is being considered for placement.

(a)

**STATE BOARD OF EDUCATION**

**Private Vocational Schools and Correspondence Schools**

**Proposed Amendments: N.J.A.C. 6:46-4.1, 4.4 through 4.18 and 5.2**

**Proposed New Rules: N.J.A.C. 6:46-4.19 and 4.20**

Authorized By: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Authority: N.J.S.A. 18A:4-10, 18A:4-15, 18A:7A et seq., 18A:54-6, 18A:54-10, 18A:69-1 et seq., 34:1A-38 and Public Law 98-524.

Proposal Number: PRN 1989-55.

Submit comments by March 8, 1989 to:

Irene Nigro, Rules Analyst  
 N.J. Department of Education  
 225 West State Street, CN 500  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

N.J.A.C. 6:46 was readopted by the State Board of Education and became effective October 5, 1987. New rules and amendments are being proposed in response to private vocational school fee legislation, P.L. 1987, c.375, effective January 7, 1988. The amendments are to clarify intent, remove rules that are unnecessary or not reasonably enforceable, reinstate the recognition of accrediting agencies and provide the Commissioner with the authority to approve programs in accredited private vocational schools in either credit hours or clock hours of instruction.

The following changes are proposed:

N.J.A.C. 6:46-4.1(a)9 will exempt Federal Aviation Administration approved schools from regulation by the Department.

N.J.A.C. 6:46-4.1(a)10 will exempt courses, programs or schools regulated by the State Board of Higher Education from regulation by the Department.

N.J.A.C. 6:46-4.1(c) is amended to clarify the content of the annual report and to remove language that requires the reporting of information that will be verified through on-site monitoring.

N.J.A.C. 6:46-4.4(b)2i adds an alternative requirement to approve instructors to teach in a private vocational school. The added requirement is comparable to requirements in effect in the public school sector.

N.J.A.C. 6:46-4.4(b)2iv requires written verification of the occupational experience required by N.J.A.C. 6:46-4.4(b)2i.

N.J.A.C. 6:46-4.4(b)2v is amended to clarify the intent of the requirement.

N.J.A.C. 6:46-4.4(b)4 is amended to state that admissions, field or sales representatives shall not have authority to approve or sign pupil financial loan or grant applications.

N.J.A.C. 6:46-4.4(b)4 is amended to preclude private vocational schools from using separate and unaffiliated salespersons to recruit pupils for enrollment.

N.J.A.C. 6:46-4.5(e) is amended to remove a portion of a rule that is not enforceable and add a new provision regarding the responsibility of the auditor.

N.J.A.C. 6:46-4.6(a) is amended to ensure that private vocational schools do not advertise or imply that permitted but unapproved courses are approved by the Department.

N.J.A.C. 6:46-4.6(b)2 is amended to establish requirements that the competencies the pupil will attain upon completion of the program be stated as part of the information submitted to the Department for approval.

N.J.A.C. 6:46-4.6(c) is amended to broaden the scope of physical hazards that may be identified during on-site monitoring.

N.J.A.C. 6:46-4.6(d) provides the Commissioner with the authority to approve the offering of certain programs for credit hours rather than clock hours only. The addition will permit schools currently approved by the U.S. Department of Education to be eligible for participation in Title IV student loan and grant programs to maintain that eligibility.

N.J.A.C. 6:46-4.7(d) removes unnecessary language regarding the registration fee.

N.J.A.C. 6:46-4.7(g) removes language to clarify the intent of itemizing all costs to pupils.

N.J.A.C. 6:46-4.7(j) is amended to require that pupil refunds be processed and sent within 30 calendar days.

N.J.A.C. 6:46-4.8(a)1 is amended to broaden overly restrictive language regarding signing of enrollment agreements.

N.J.A.C. 6:46-4.8(c) is amended to maintain the intent of not permitting a salesperson to sign enrollment agreements and to clarify who is considered appropriate to sign such agreements.

N.J.A.C. 6:46-4.9(a)2 is amended to reinforce the intent that pupils receive refunds for services paid for in advance but not issued to the pupil by the school.

N.J.A.C. 6:46-4.10(b)6 requires the school to provide the pupil with the record of academic progress.

N.J.A.C. 6:46-4.10(b)16 clarifies the intent of the rule that pupils, not meeting the ability to benefit admission criteria, be informed about free or inexpensive remedial programs available.

N.J.A.C. 6:46-4.11(a)2iii removes language that is not necessary since pupil placement is not required.

N.J.A.C. 6:46-4.12(c) is amended to clarify that pupils must pass the admissions test and that a copy of the test(s) and minimum passing score(s) be forwarded to the Department.

N.J.A.C. 6:46-4.12(d) is amended to state the types of education programs addressed by the rule, to remove unnecessary wording and to clarify intent.

N.J.A.C. 6:46-4.13(j) is amended to ensure that schools provide verified placement data to the public.

N.J.A.C. 6:46-4.14(a)1 is amended to raise the interest rate.

N.J.A.C. 6:46-4.15(b) is amended to require the submission of external audits and program reviews with the application for renewal of approval.

N.J.A.C. 6:46-4.16(b) is amended by eliminating language that would restrict the Commissioner from placing reasonable restrictions on the operation of a private vocational school without invoking the procedures established under N.J.A.C. 6:24-3.1.

N.J.A.C. 6:46-4.16(d) is amended to broaden the authority of the Commissioner and to standardize wording.

N.J.A.C. 6:46-4.17 is amended to clarify intent.

N.J.A.C. 6:46-4.18(a) is amended to provide a realistic time period for monitoring all private vocational schools.

N.J.A.C. 6:46-4.19 is a new rule to implement P.L. 1987, c.375 (effective January 7, 1988) which amended N.J.S.A. 18A:69-2 and 18A:69-3 and supplemented Chapter 69 of Title 18A of the New Jersey Statutes. The law requires the payment of fees for the review and approval of an initial certificate of approval to operate a private vocational school in New Jersey, the annual renewal of the certificate of approval to operate a private vocational school in New Jersey, and for the initial and annual application for a certificate of approval for out-of-State private vocational schools to recruit New Jersey residents within the borders of New Jersey, and establishes initial and annual fees required to register marketing representatives or agents of an out-of-State private vocational school to solicit students within the borders of New Jersey.

N.J.A.C. 6:46-4.20 is a new rule which includes language that permits the Commissioner to recognize accrediting agencies that accredit private vocational schools. Recognition by the Commissioner of appropriate accrediting agencies permits certain schools to apply for approval to train veterans and allow the veterans to receive financial aid.

N.J.A.C. 6:46-5.2(d)3 is amended to align the rule with the referenced section in N.J.A.C. 6:46-4.4(b).

N.J.A.C. 6:46-5.2(e)5 is amended to align the rule with similar language in N.J.A.C. 6:46-4.5(c).

#### Social Impact

The amendments proposed will have positive impact on individuals who enroll in private vocational schools regulated by the Commissioner. Items in the code that may have been unclear in intent have been clarified to ensure consistent enforcement of the rules.

Additional qualifications to allow instructors to be approved to teach in private vocational and correspondence schools are added to provide an avenue for knowledgeable practitioners to qualify to instruct through verified on-the-job experience. This addition will benefit pupils in the private sector in a similar way students in the public education system benefit by learning occupational competencies from a person experienced in the occupation.

Rules that have been found to be overly restrictive or unenforceable have been modified. This will benefit the staff responsible for enforcing the rules because time and resources will not have to be directed to areas that will not benefit pupils.

N.J.A.C. 6:46-4.19 will provide positive social impact because New Jersey residents recruited by out-of-State private vocational schools soliciting in New Jersey will be provided with the same consumer protection as if they chose to attend an approved New Jersey based private vocational school.

N.J.A.C. 6:46-4.20 provides the Commissioner with the authority to recognize accrediting agencies that are authorized by the Secretary, U.S. Department of Education. The recognition of the agencies by the Commissioner will assure the continued availability of veterans training funds from the Veterans Administration to eligible pupils enrolled in accredited private vocational schools. In addition, recognition of the accrediting agencies will foster and enhance cooperation between the agencies and the Department to share information concerning the approval and operation of private vocational schools.

The inclusion of a new rule giving the Commissioner authority to approve private vocational school program in credit hours, as well as clock hours, will permit the Commissioner an option allowed by the U.S. Department of Education in determining eligibility for student grant and loan programs.

Changes in N.J.A.C. 6:46-5.2 are made to include by reference applicable rules from N.J.A.C. 6:46-4 that are being amended.

#### Economic Impact

The fees required by legislation will be paid by in-State and out-of-State private vocational schools. It is estimated that approximately \$117,000 will be generated annually through fees collection. The fees collected will be used to defray the excess cost of professional and support staffing required by the Department to effectively regulate and monitor the private vocational school industry.

In general, compliance with the proposed amendments should not increase the cost of operating a private vocational and correspondence school above any cost associated with compliance with the current law and rules in effect.

At N.J.A.C. 6:46-4.7(j), reducing the period of time in which the schools must return a tuition refund due students, in keeping with prevailing Federal student assistance requirements, should not significantly financially impact the schools. However, it may be of benefit to students using guaranteed student loans through the reduction of interest due when the refund is made directly to the lender and 10 days interest is not applied to the outstanding balance.

The change of interest rate at N.J.A.C. 6:46-4.14 was based upon a public comment received from the professional group representing New Jersey private career schools. Any school involved in direct loaning of tuition moneys should not be negatively impacted. If the school must borrow money for the loans, they would be permitted to realize a more competitive return on their funds.

#### Regulatory Flexibility Statement

The majority of private vocational and correspondence schools regulated by the Department of Education meet the definition of a small business as defined at N.J.S.A. 52:14B-17. The following addresses the impact of the proposed amendments and new rules on these businesses.

The content of the annual pupil enrollment and tuition source report will be reduced. The qualifications for instructors is broadened to expand the pool of potentially qualified instructors in private vocational and correspondence schools. Verification of instructor qualifications is clearly stated but should not be an additional burden because verification is a generally accepted practice. Accredited private vocational schools may have their courses approved in clock hours in addition to credit hours to simplify participation in Federal student aid programs and tuition refund processing time is aligned with Federal requirements. Additional appropriate school officials may sign enrollment agreements to decrease processing time. The five dollar cost to purchase a copy of a required directory will be eliminated as the Department will provide the copies as required. Placement data will not have to be kept for those students completing a program who do not seek employment. Schools that lend students tuition money may do so at a more competitive rate. Schools involved in Federal student assistance programs may incur minimal duplicating costs to provide the Department copies of external audits and program reviews. Fees required for administering the registration and approval of private vocational schools is mandated by legislation (P.L.1987, c.375). The audit report containing financial statements will be prepared in accordance with the generally accepted accounting principles and does not add additional cost above the current requirement.

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

#### 6:46-4.1 General provisions

(a) Institutions, courses and programs excluded from these rules are the following:

1.-6. (No change.)

7. Courses or programs conducted under contract with an employer, whether at the place of employment or elsewhere, at no cost to the employee other than the cost of books, supplies, tools or equipment which become the property of the employee; [and]

8. Courses or programs licensed by the State of New Jersey Casino Control Commission [.];

9. **Ground and air flight training schools whose curricula and instructors are licensed and approved by the Federal Aviation Administration; and**

10. **Courses, programs or schools which are subject to approval or regulation by the State Board of Higher Education.**

(b) (No change.)

(c) Each private vocational school director shall submit an annual pupil enrollment and tuition source report for the period July 1 through June 30 of the preceding school year on forms provided by the commissioner. The report shall include, but not be limited to, pupil **admission and retention rates[.] and sources of tuition paid [and] by pupils [entry and exit dates for each pupil enrolled during the reporting period].** The report shall be submitted to the commissioner no later than 30 calendar days after the close of the reporting period.

#### 6:46-4.4 Private vocational school personnel qualifications

(a) (No change.)

(b) Qualifications of school personnel are as follows:

1. (No change.)

2. Qualifications of instructors shall indicate:

i. Competency in the subject(s) to be taught as demonstrated by one of the following:

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

(4) Obtaining a passing score on the **written portion of the appropriate National Occupational Competency Examination.**

(5)-(7) (No change.)

(8) **Possession of a high school diploma or its equivalent and six years full-time employment in the skilled trade or technical occupation to be taught.**

(9) **Possession of a high school diploma or its equivalent and three years full-time employment in the business or service occupation to be taught.**

ii. and iii. (No change.)

iv. **Instructors demonstrating competency in the subject area in accordance with (b)2i(8) or (9) above shall have the periods of the full-time employment verified by the director by the obtaining of written statements from former employer(s) attesting that the potential instructor demonstrated competence in the range of tasks and skills the individual will teach.**

[iv.jv. A supervising instructor offering direction and guidance to other instructors shall meet the qualifications for instructor and have completed at least one year of full-time teaching in the [subject] **occupational area** taught by the instructors being supervised.

3. (No change.)

4. Persons [employed] **utilized** by the school for the purpose of recruiting students to enroll in the school shall **be employees of the school and** hold the title of admissions, field or sales representative and shall have participated in training by the director or owner to thoroughly familiarize the representative with the school's courses, programs, admission requirements, policies, regulations and completion requirements. **Admissions, field or sales representatives shall not have authority to approve or sign the pupil financial loan or grant application.**

#### 6:46-4.5 School ownership and financial responsibility

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

(e) The private vocational school shall be required to submit to the Department, prior to initial approval and on an annual basis thereafter, an audit report containing financial statements [and an opinion expressed by] **prepared by a certified public accountant,**

licensed public accountant, registered municipal accountant or licensed public school accountant. [that the school has financial resources sufficient to maintain its programs for the period of time represented by the longest course or program to be offered.] **The auditor shall determine whether the financial statements of the organization present fairly its financial position and the results of its financial operations and that they are in accordance with generally accepted accounting principles.**

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

#### 6:46-4.6 Courses or programs offered

(a) The private vocational school shall **advertise and offer** to the public **as courses and programs approved by the Department** only those courses and programs which have been reviewed, evaluated and approved by the Department.

(b) Each request for course or program approval submitted by the private vocational school shall contain sufficient information for proper evaluation. The information submitted shall include:

1. (No change.)

2. Specific vocational objective(s) of the course or program, **to include occupational competencies the pupil will acquire;**

3.-9. (No change.)

(c) In all shops or laboratories where there are physical hazards such as, **but not limited to,** moving machinery, possibility of fire, explosion or exposure to high voltage electricity, there shall be compliance with all local, State and Federal safety and health codes.

(d) **An accredited private vocational school approved by the Commissioner may request that the Commissioner grant course or program approval in credit hours. The Commissioner may grant approval in credit hours for a course or program taught in an approved private vocational school provided the course or program approval request contains the information specified in (b) above. In addition, the number of credit hours requested must be in accordance with the conversion formula from clock hours to credit hours used by the appropriate accrediting agency recognized by the Commissioner and accepted by the Secretary of the United States Department of Education.**

#### 6:46-4.7 Tuition, fees and other charges

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

(d) Upon written notification of admission of the pupil to the school, the school may require the payment of a registration fee subject to the following:

1. The fee shall be credited to the pupil's tuition account [upon completion of the course of program];

2.-3. (No change.)

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

(g) Required pupil books, equipment and supplies[, not included in the tuition,] shall be itemized with the approximate cost to the pupil. The school shall not require pupils to purchase the books, equipment and supplies from the school if such items are available on the general market.

(h)-(i) (No change.)

(j) All refunds due pupils shall be processed and sent to the pupil no later than [40] **30** calendar days after the date of termination of enrollment of the pupil by the school or receipt by the school of notification from the pupil of withdrawal from the school.

#### 6:46-4.8 Enrollment agreement

(a) The private vocational school shall use an enrollment agreement which shall be the contract between the school and the pupil. This agreement shall:

1. Be prepared in duplicate, dated and signed by the pupil and [a school owner or a director] **an appropriate school official.** In the case of a minor, both the pupil and a parent or legal guardian must sign. The pupil shall be furnished a copy of the agreement;

2.-6. (No change.)

(b) (No change.)

(c) The enrollment agreement may be executed at the school, the pupil's home or by mail. The agreement shall not become binding until three business days after signing by both parties. The enrollment agreement shall be signed by the school owner, [or a] director **or other**

appropriate school official designated in writing by the owner or director. An appropriate school official shall not be an admissions, field or sales representative.

(d) (No change.)

#### 6:46-4.9 Refund policy

(a) In the event of notification by the pupil of withdrawal from the school or termination by the school prior to the completion of the course or program, the following considerations shall determine the maximum obligation of the pupil[:]. (The school may determine its refund policy to the pupil on a more liberal basis.)

1. (No change.)

2. The school may require that all books, equipment and tools purchased from the school [by] and issued to the pupil be retained by the pupil. However, the school may refund a portion of the monies paid if the books, equipment and tools are in proper condition for resale.

3. (No change.)

#### 6:46-4.10 School bulletin

(a) (No change.)

(b) The school bulletin shall be the official statement of the school's policies, regulations, charges and fees and shall include, but not be limited to, the following items:

1.-5. (No change.)

6. School policy and regulations on standards of progress required of the pupil. This policy shall define the grading system of the school, the minimum grades required to remain in school, consequences for unsatisfactory grades or progress, a description of the probationary period, if any, allowed by the school and conditions for readmission following a dismissal for unsatisfactory progress, attendance or behavior. A statement shall be made regarding what constitutes the record of academic progress maintained by the school and the record of academic progress shall be [available] provided to the pupil [upon the pupil's request];

7.-15. (No change.)

16. A statement that pupils **not meeting the school admission requirements and** requiring remedial education programs shall receive information from the director on the availability of remedial programs from adult learning centers listed in the "Adult Education Program Directory" published by the Division of Adult Education, New Jersey Department of Education **and sent to each school by the Department.**

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

#### 6:46-4.11 School records

(a) Private vocational schools shall maintain records which include, but are not limited to, the following:

1. (No change.)

2. Pupil records for every pupil admitted shall be maintained for a period of five years. The records shall include, but not be limited to:

i.-ii. (No change.)

iii. Placement data on pupils who complete the program indicating the employer, date of hire, job title and starting salary attested to by the pupil or verified by the school [and accumulated by course or program title or an indication of unemployment];

iv.-vi. (No change.)

3.-4. (No change.)

#### 6:46-4.12 Conduct of the school

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

(c) A pupil not meeting the minimum educational requirement prescribed in (b) above may be admitted by the school on the ability to benefit from the education or training offered by the private vocational school as determined by the school director. Prior to admission, pupils shall be administered **and pass** a nationally recognized standardized or industry-developed test measuring the applicant's ability to successfully complete the program for which applied. Based on the test results, the director shall determine whether the pupil can benefit from the course or program and be admitted to the school. **A copy of the test(s) used and the minimum passing**

**score(s) required by the school shall be forwarded to the Assistant Commissioner, Division of Vocational Education.**

(d) Applicants unable to satisfy the admissions testing requirements specified in (c) above [may be admitted and enrolled in a program or course of remedial or developmental education which does not exceed one academic year or its equivalent] **shall not be admitted to the private vocational school.** The director of the school shall provide the pupil with information regarding the availability of remedial education programs at adult learning centers. Locations of the centers are contained in the "Adult Education Program Directory" available from the Division of Adult Education, New Jersey Department of Education. Following the **remedial or developmental education** program, the pupil may be re-evaluated by the director for compliance with admission requirements or ability to benefit criteria.

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

#### 6:46-4.13 Publicity, advertising and solicitation of students

(a)-(i) (No change.)

(j) A guarantee of placement for graduates shall not be promised or implied by any school, owner, partner, officer, employee, agent or salesperson thereof. **Placement statistics shall not be advertised or appear in any school document unless they are verified by the school to the Department.** No school, in its advertising or through the activities of its owners, officers or representatives shall guarantee or imply the guarantee of employment or of any certain wage or salary.

(k) (No change.)

#### 6:46-4.14 Scholarships and financial assistance

(a) Schools may offer financial assistance and/or scholarships as follows:

1. Loan or deferred payments may be made to worthy students. Interest on loans shall not exceed the prime interest rate **plus 2.5 percent** in effect 30 days in advance of the loan;

2.-4. (No change.)

#### 6:46-4.15 Period of approval of school and school personnel

(a) (No change.)

(b) Such school shall file an application for renewal of approval not later than 60 calendar days prior to the expiration of the certificate of approval. **The renewal application shall contain a copy of all external audits and program reviews conducted regarding the school since the last approval.** If the school submits the application for renewal by the submission deadline, the school may continue to operate with the existing certificate of approval until such time as the [commissioner] **Commissioner** determines that the school is not eligible for reapproval or the new certificate of approval is issued.

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

#### 6:46-4.16 Violations of rules

(a) (No change.)

(b) Prior to the revocation or withholding of a certificate of approval [or the imposition of conditions upon the continued operation of the school,] the [commissioner] **Commissioner** shall direct the owner of the school to show cause why such sanctions shall not be imposed in accordance with the procedure established under N.J.A.C. 6:24-3.1.

(c) (No change.)

(d) The [commissioner] **Commissioner** shall notify all relevant agencies, **including but not limited to**, accrediting agencies, the Department of Higher Education, New Jersey Higher Education Assistance Authority and other student loan guarantors when the approval of an approved private vocational school is revoked or **withheld** by the [commissioner] **Commissioner.**

#### 6:46-4.17 Conformity with existing rules

The granting of approval to operate a private vocational school by the [commissioner] **Commissioner** shall not waive any requirements established by legally constituted commissions or other local, State or [federal] **Federal laws or rules and regulations.**

#### 6:46-4.18 Procedures for monitoring private vocational schools

(a) The [commissioner] **Commissioner** shall monitor each approved private vocational school [annually] **prior to December 31,**

1989. After January 1, 1990, each approved private vocational school staff shall be monitored at least once every two years.

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

**6:46-4.19 Fees required for administering the registration and approval process of private vocational schools**

(a) Application for initial approval to operate a private vocational school in New Jersey shall be submitted to the Commissioner for approval in accordance with N.J.A.C. 6:46-4.15(a).

1. A preliminary submission consisting of the following application components shall be forwarded to the Commissioner for review and approval;

i. A letter of intent to seek a certificate of approval to operate a private vocational school;

ii. A copy of the course(s) or program(s) proposed to be offered detailing information as prescribed in N.J.A.C. 6:46-4.6(b);

iii. Information required regarding the proposed owner(s) as prescribed in N.J.A.C. 6:46-4.5(a); and

iv. Twenty-five percent of the required fee described and in the method described in (d) and (e) below.

2. Upon approval of the preliminary submission, the remainder of the required application components shall be forwarded to the Commissioner for review and approval with the remaining 75 percent of the fee described in (e) below.

(b) Each application for annual renewal of the certificate of approval to operate a private vocational school in New Jersey shall be submitted in accordance with N.J.A.C. 6:46-4.15(b) and shall be accompanied by the required fee in the amount and method described in (d) and (e) below.

(c) A private vocational school located outside the State of New Jersey shall not permit a marketing representative or other agent of the out-of-State school to recruit New Jersey residents within the borders of New Jersey until the school and agent are approved by the Commissioner to conduct business in New Jersey in accordance with the rules contained in this subsection.

1. The following must be submitted for review and approval by the Commissioner before an initial certificate of approval to conduct business in New Jersey may be issued:

i. A letter of intent to recruit New Jersey residents from the owner(s) or director of the school;

ii. Evidence that the school and courses and programs offered are approved by the appropriate approving agency of the state in which the school is headquartered;

iii. Evidence that tuition, fees and other charges are developed and administered as specified in N.J.A.C. 6:46-4.7;

iv. An enrollment agreement that meets the requirements specified in N.J.A.C. 6:46-4.8 and contains a statement of a refund policy which complies with N.J.A.C. 6:46-4.9;

v. A copy of the current school bulletin or catalog which includes courses and program outlines offered;

vi. Copies of publicity and advertising materials to be used to recruit New Jersey residents which meet the requirements specified in N.J.A.C. 6:46-4.13;

vii. Completed applications for the registration of each marketing representative or agent of the school who will recruit New Jersey residents on the application form provided by the Commissioner; and

viii. The required fees in the amount and method of payment described in (d) and (e) below.

2. Sixty days prior to the expiration date of the initial certificate of approval to conduct business in New Jersey, the following must be submitted to the Commissioner for review and approval to renew the certificate of approval:

i. Items identified in (a)ii through viii above; and

ii. A letter of request that the marketing representative(s) or agent(s) previously registered continue to be registered; and

iii. Completed applications for each new or additional marketing representative(s) or agent(s) submitted on the application form provided by the Commissioner.

3. The Commissioner shall prescribe the annual effective starting and expiration dates of the certificate of approval to conduct business in New Jersey and the registration of each marketing representative(s) and agent(s).

4. Annual pupil enrollment and tuition source reports providing information pertaining to New Jersey residents in attendance at the out-of-State school shall be reported in accordance with N.J.A.C. 6:46-4.1(c).

5. The Commissioner may revoke the certificate of approval to conduct business issued to the out-of-State school or the registration of the marketing representative(s) or agent(s) for good cause in accordance with the provisions of N.J.A.C. 6:24-3.1.

6. When an out-of-State school is found operating in violation of this subsection, the owner(s) or director of the school will be notified of the violations, in writing, by the Commissioner and given 20 working days to comply with these provisions. If the school does not comply within the time period specified, the Commissioner may seek the assistance of the Attorney General to enjoin further operation of the school or take such other action as the Commissioner deems appropriate consistent with the enforcement of N.J.S.A. 18A:69-1 et seq.

(d) General requirements regarding the payment of required fees are as follows:

1. Payment will be in the form of a certified check or money order in the appropriate amount made payable to the "Treasurer, State of New Jersey";

2. The required fees are non-refundable;

3. Review and approval actions required by this subchapter will not be undertaken until the required fee payments are received; and

4. Non-payment of the required fees shall be cause for the Commissioner to revoke a certificate of approval to operate a private vocational school.

(e) The following specific fees are required and became effective on January 7, 1988, as per N.J.S.A. 18A:69-2 and 3:

1. Each initial application for a certificate of approval to operate a private vocational school in New Jersey—\$700.00 for each of the first 10 school sites and \$70.00 for the 11th and each additional site;

2. Each annual request for renewal of a certificate of approval to operate a private vocational school in New Jersey—\$450.00 for each of the first 10 school sites and \$45.00 for the 11th and each additional site;

3. Each out-of-State school site requesting an initial one year certificate of approval to recruit in New Jersey in accordance with this subsection—\$700.00;

4. Each out-of-State school site requesting an annual renewal of certificate of approval to recruit in New Jersey—\$450.00; and

5. Each initial and annual request to register an out-of-State marketing representative or agent to recruit New Jersey residents—\$25.00.

**6:46-4.20 Recognition of accrediting agencies**

(a) The Commissioner may recognize the institutional and programmatic accreditation granted to a school by an accrediting agency recognized by the United States Secretary of Education.

(b) Such recognition by the Commissioner shall be subject to the following:

1. The accredited school shall comply with laws and the rules of the New Jersey State Board of Education;

2. The recognition of accreditation shall apply only to courses or programs that were evaluated and recognized by the accrediting agency;

3. Recognition of accredited status shall permit a school to apply for approval under the provisions of 38 U.S.C. §1775, for the purpose of training veterans and other eligibles; and

4. The accrediting agency shall notify the Commissioner of planned accrediting or reaccrediting evaluation visits and invite a member of the Department to participate on the evaluation visit.

**6:46-5.2 Standards for correspondence schools**

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

(d) Qualifications of instructional staff requirements:

1.-2. (No change.)

3. **Qualifications of supervisors of correspondence instruction shall indicate competency in the subject(s) which he or she will evaluate as demonstrated by [one of the following] meeting the qualifications identified in N.J.A.C. 6:46-4.4(b)2 i through iv.**

[i. An appropriate instructional certificate issued by the State Board of Examiners or a comparable instructional certificate issued by a recognized certifying authority in another state with which the State Board of Examiners has reciprocity;

ii. A minimum of a baccalaureate degree with a major or specialization in the subject area to be evaluated;

iii. Journeyperson's status, by possession of a certificate of completion of apprentice training in the subject to be evaluated;

iv. A passing score on the appropriate National Occupational Competency Examination;

v. A passing score on the National Teacher Examination in the appropriate subject area. A passing score shall be the minimum passing score required by the Department for the issuance of instructional certification in the appropriate subject teaching field;

vi. A certificate of completion from an approved school, license or rating in the occupational area to be evaluated;

vii. The minimum of an associate's degree from an approved institution with a major or specialization in the subject area to be evaluated.

4. Supervisors of correspondence instruction demonstrating competency in the subject area in accordance with (d)3iv or v above must have completed a minimum of two years full-time employment in the occupation prior to taking the examinations.

5. Supervisors of correspondence instruction demonstrating competency in the subject area in accordance with (d)3vi or vii above must have completed a minimum of two years full-time employment in the occupation following the training time.]

(e) School ownership and financial responsibility requirements: 1.-4. (No change.)

5. The correspondence school shall be required to submit to the Department, prior to initial approval and on an annual basis thereafter, an audit report containing financial statements [and an opinion expressed by] prepared by a certified public accountant, licensed public accountant, registered municipal accountant or licensed public school accountant, [that the school has financial resources sufficient to maintain its operation for the period of time represented by the longest course or program of instruction to be offered.] **The auditor shall determine whether the financial statements of the organization present fairly its financial position and the results of its financial operations and that they are in accordance with generally accepted accounting principles.**

6.-7. (No change.)

(f)-(o) (No change.)

## ENVIRONMENTAL PROTECTION

### (a)

#### DIVISION OF COASTAL RESOURCES

#### Notice of Extension of Comment Period Coastal Permit Program Rules and Waterfront Development

#### Proposed Amendment: N.J.A.C. 7:7-2.3

**Take notice** that the Department of Environmental Protection is extending until February 20, 1989 the period for the submission of written comments on the proposed amendment concerning waterfront development. The proposal was published on January 3, 1989 in the New Jersey Register at 21 N.J.R. 4(a). Please refer to the proposal (DEP Docket No. 047-88-12) for further information.

Submit comments by February 20, 1989 to:

Michael P. Marotta, Esq.  
Division of Regulatory Affairs  
Department of Environmental Protection  
CN-402  
Trenton, New Jersey 08625

### (b)

#### DIVISION OF FISH, GAME AND WILDLIFE

#### Wildlife Management Areas

#### Proposed Amendment: N.J.A.C. 7:25-2.18

Authorized By: Christopher J. Daggett, Acting Commissioner,  
Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-9 and 23:7-9.

DEP Docket Number: 001-89-01.

Proposal Number: PRN 1989-63.

Submit written comments by March 8, 1989 to:

Judeth A. Piccinini, Esq.  
Division of Regulatory Affairs  
New Jersey Department of Environmental Protection  
CN 402  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The Division of Fish, Game and Wildlife (Division) proposes to amend N.J.A.C. 7:25-2.18 to add the New Sweden and Oyster Creek Wildlife Management Areas to the list of Wildlife Management Areas enumerated therein. Areas listed in N.J.A.C. 7:25-2.18 are subject to the rules in N.J.A.C. 7:25-2, which govern use by the public of land and water areas under the control of the Division. Background information on the proposed additions is as follows:

#### New Sweden

The New Sweden Wildlife Management Area consists of 1,096 acres located in Fairfield and Lawrence Townships, Cumberland County. This area was obtained through two separate donations to the State, one from the Nature Conservancy in June 1986 and one from J & M Lands in December 1987. This area was acquired for wildlife management purposes, including outdoor recreation, science and education activities, hunting, and fishing.

#### Oyster Creek

The Oyster Creek Wildlife Management Area consists of approximately four acres located in Ocean Township, Ocean County. This area was acquired in February 1988 by a Declaration of Taking by the State and was assigned to the Division for management purposes through the Green Acres program. This area was acquired with a combination of Green Acres funds and Federal Aid funds designated for the Oyster Creek Marine Access Site. The area was obtained to provide a boat ramp and day use facility for the State's marine recreation users. The major uses of this area will be boating, fishing, water skiing, sailboating, crabbing, clamming, and bank fishing access.

The amendment also renumbers the list of Wildlife Management Areas in N.J.A.C. 7:25-2.18 and adds a new subsection, N.J.A.C. 7:25-2.18(b), which provides information on obtaining maps of Wildlife Management Areas.

#### Social Impact

The proposed amendment should have a positive social impact on those State citizens using the New Sweden and Oyster Creek Wildlife Management Areas by applying the rules governing the use of areas under the control of the Division (N.J.A.C. 7:25-2) to the two areas, thereby furthering their safe and proper use. New subsection N.J.A.C. 7:25-2.18(b) is expected to have a positive social impact on those State citizens using any Wildlife Management Areas, by making information on the environmental and recreational values of State Wildlife Management Areas more widely available to the general public.

#### Economic Impact

The proposed amendment is not expected to have an adverse economic impact on the general public, since it will only deny economic benefit to those persons seeking to profit from the unsafe or environmentally degrading use of the New Sweden and Oyster Creek Wildlife Management Areas.

#### Environmental Impact

The proposed amendment should reduce the prospects of environmental degradation of the New Sweden and Oyster Creek Wildlife Management Areas by implementing the rules at N.J.A.C. 7:25-2.

**Regulatory Flexibility Statement**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendments will not impose reporting, recordkeeping, or other compliance requirements on small businesses.

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

7:25-2.18 Wildlife Management Areas

(a) This subchapter applies to the following designated Wildlife Management Areas:

1.-49. (No change.)

**50. New Sweden**

Renumber existing 50 and 51 as **51 and 52** (No change in text.)

**53. Oyster Creek**

Renumber existing 52 through 72 as **54 through 74** (No change in text.)

(b) Interested persons may obtain information on Wildlife Management Areas by contacting the Division at (609) 292-2965. A Guide to Wildlife Management Areas, containing maps of each area, is available from:

Division of Fish, Game and Wildlife  
 New Jersey Department of Environmental Protection  
 CN 400  
 Trenton, New Jersey 08625

**(a)**

**DIVISION OF FISH, GAME AND WILDLIFE**

**Marine Fisheries Administration**

**Taking of Blue Crabs**

**Proposed Amendment: N.J.A.C. 7:25-7.13**

Authorized By: Christopher J. Daggett, Acting Commissioner,

Department of Environmental Protection.

Authority: N.J.S.A. 23:2B-6 and 23:5-35.2.

DEP Docket Number: 002-89-01.

Proposal Number: PRN 1989-64.

Submit written comments by March 8, 1989 to:

Judeth A. Piccinini, Esq.  
 Division of Regulatory Affairs  
 Department of Environmental Protection  
 CN 402  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Division of Fish, Game and Wildlife (Division) proposes to amend N.J.A.C. 7:25-7.13, which governs the dredging of blue crab (*Callinectes sapidus*) in the tidal waters of the State. The proposed amendments change the crab dredging season opening date for waters north of Route 36 from November 1 to December 1. Postponing the season opening date in these waters is expected to increase harvesting efficiency by allowing the crabs to become semi-dormant prior to the opening of the dredging season.

The Division also proposes to increase the allowable tooth bar size and weight of dredging gear on vessels operating in Raritan and Sandy Hook Bays. The proposed amendment will benefit the State's blue crab fishery by allowing the use of gear more suited to the requirements of harvesting blue crabs in the deep waters of these bays.

**Social Impact**

The proposed amendment continues the Division's management of the blue crab in the State's tidal waters and is not expected to have an adverse social impact on the crab dredge fishery or the general public. Any harvesting losses from the shorter season for blue crab harvest north of Route 36 should be offset by the greater harvest efficiency expected as a result of delaying the season opening date. The proposed changes in gear size and weight should have a positive social impact on members of the crab dredge fishery by allowing gear better suited to the requirements of harvest in deep water bays.

**Economic Impact**

The proposed amendment will have a positive economic impact on a portion of the State's blue crab dredge fishery by allowing gear more suited to the requirements of harvesting blue crabs in deep water. The change in the dredge season opening date should have a positive economic impact on the fishery by allowing the crabs to become semi-dormant prior to the opening of the season. Both changes will increase harvesting efficiency.

**Environmental Impact**

By shortening the dredge fishing season, the proposed amendment may have a positive environmental impact on the blue crab habitat north of Route 36. Disturbance to the bottom should be reduced as a result of the shorter season. The Division does not expect the proposed increase in tooth bar size and allowable weight of crab dredges to have an adverse environmental impact on the blue crab habitat since the deep water conditions in the affected areas are suited to the larger gear.

**Regulatory Flexibility Statement**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendments will not impose reporting or recordkeeping requirements on small businesses. Members of the crab dredge fishery will be required to comply with the shortened harvest season north of Route 36, but should benefit from the increased harvest efficiency expected from the delay in season opening date.

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

7:25-7.13 Crab dredging in the Atlantic Coast section

(a) No crabs may be caught or taken in the Atlantic Coast section by dredges unless a valid crab dredge license is aboard the vessel. The crab dredges shall conform to the following specifications:

1. The maximum length of the tooth bar shall be 75 inches in Raritan and Sandy Hook Bays, **but if only one dredge is in possession then the maximum length of the tooth bar shall be 96 inches in Raritan and Sandy Hook Bays**, and 38 inches in all other waters.

2. The maximum weight of the dredge shall be 110 pounds in Raritan and Sandy Hook Bays, **but if only one dredge is in possession then the maximum weight of the dredge shall be 200 pounds in Raritan and Sandy Hook Bays**, and 60 pounds in all other waters.

3.-7. (No change.)

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

(d) No person shall catch, take, or attempt to catch or take crabs from any of the lands of the Atlantic Coast [S]section except from one-half hour after sunrise to one-half hour before sunset between [November 1 and March 31 north of Route 36 (Highlands Bridge),] November 15 and March 31 south of Route 40 (Black Horse Pike), and December 1 and March 31 [between Route 36 and] **north of Route 40**, nor at any time on Sunday except in Raritan and Sandy Hook Bays.

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

**HEALTH**

**(b)**

**DIVISION OF HEALTH PLANNING AND RESOURCE DEVELOPMENT**

**Certificate of Need: Advanced Life Support Programs**

**Mobile Intensive Care Unit (MICU)**

**Critical Care Transport Unit (CCTU)**

**Proposed New Rules: N.J.A.C. 8:33N**

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2K-7 et seq. and 26:2H-1 et seq.

Proposal Number: PRN 1989-66.

Submit comments by March 8, 1989 to:

John A. Calabria, Chief  
Health Systems Services  
New Jersey Department of Health  
CN 360, Room 604  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

Emergency medical service (EMS) is provided to patients with severe, life-threatening, or potentially disabling conditions that require immediate intervention. Advanced life support (ALS) is a specialized form of EMS intervention provided in either a pre-hospital or interhospital transport setting. In furtherance of the overall EMS objectives of the Department of Health, the purpose of these proposed new rules is to integrate ALS services into a coordinated network of EMS care in New Jersey. This network includes Basic Life Support ambulance service; Level I, II, and III hospital regional trauma centers and local emergency room services; and emergency communication and dispatch, in addition to ALS programs.

The proposed new rules would be used in reviewing certificate of need applications from hospitals applying either to initiate mobile intensive care unit (MICU) service or to add MICU vehicles. The MICU may be either patient transporting or non-patient transporting. In addition, the rules would apply to certificate of need applications from hospitals for critical care transport units, which provide ALS service during interhospital transfers.

Mobile intensive care units are specialized hospital-based vehicles staffed with a combination of registered nurses and certified paramedics. These units are dispatched to treat life threatening emergencies, such as serious trauma; cardiac emergencies, such as myocardial infarction and cardiac arrest; and serious medical emergencies, including respiratory problems, overdoses, strokes, allergic reactions and diabetic problems. In general, mobile intensive care units do not transport patients (except in Newark, Jersey City and New Brunswick), but work cooperatively with basic life support services and volunteer first aid squads who provide the actual patient transportation to the hospital.

Mobile intensive care staff communicate by radio with an emergency department physician who gives orders for advanced life support care. Advanced life support care includes cardiac monitoring, intravenous therapy defibrillation, and the administration of approved medications. An outpatient bill is issued to the patient for the services provided under Medicare Part B.

Mobile intensive care units currently provide service to 95 percent of the State's population and are located in all counties except Sussex, Warren, Salem, and Cumberland. In 1987, MICU services were provided to 87,929 patients.

Critical care transport units are licensed emergency ambulances specially equipped to transfer seriously ill or injured patients from one medical facility to a more specialized medical facility for treatment and/or testing. These units are hospital-based and staffed with a combination of physicians, nurses, paramedics, and certified emergency medical technicians. Staff maintains patient status during transport, including airway management and administration of intravenous therapy and medications. Staff operates on physician's standing orders and can provide advanced life support service to stabilize the patient's condition during transport. These units are not designed to respond to the scene of accidents or emergencies, but to provide specialized patient transportation between hospital facilities. This level of advanced care is not available from basic life support emergency vehicles.

MICU programs have been subject to certificate of need requirements since 1980, while no CCTU programs are currently operating in New Jersey. New rules are being proposed at this time because of the recent termination of the Medicare waiver agreement which had limited the total number of ALS vehicles in the State to no more than 60. These rules will permit the Department of Health to consider applications to expand the number of ALS vehicles.

The rules contain criteria for determining need for additional MICU service, based primarily on whether existing MICU vehicles are providing timely and effective prehospital ALS service in the area proposed to be served by the applicant. Need criteria for CCTU programs are also included. The rules also contain a number of requirements to assure that the applicant's program is financially feasible; has appropriate communication and other linkages with Basic Life Support providers, other hospitals, and other EMS providers; will have appropriate operational

controls and qualified staffing; and can respond to the demand for ALS services in its proposed service area.

It should be noted that both MICUs and CCTUs are subject to licensure standards administered by the Department of Health in addition to certificate of need requirements. The licensure process is used to assure that ALS programs will operate in accordance with detailed standards for vehicles, equipment, administration of drugs, personnel training and skill retention, medical control, communication and dispatching systems, and recordkeeping. Licensure regulatory proposals for both MICUs and CCTUs are currently under development by the Department of Health.

#### Social Impact

N.J.S.A. 26:2H-1 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, hospitals and health care services, and health facility cost containment programs . . .".

In accordance with this State policy, the criteria and standards contained in the proposed rules are designed to promote high quality, accessible, responsive ALS prehospital and interhospital services which are provided at a reasonable cost. In addition, planning and coordinating MICU services as part of an integrated Statewide EMS network has the documented potential for saving lives by improving response times and the effectiveness of intervention techniques. Responsiveness is enhanced by regionalizing communication and dispatch of MICU vehicles, by clearly defining rational primary service areas for which a particular MICU hospital is responsible, and by arrangements for backup coverage when vehicles are out of service. The rules are also designed to encourage expansion of MICU service for areas not currently covered by any hospital or where existing vehicles are unable to provide adequate and timely service.

#### Economic Impact

With the end of the Medicare reimbursement waiver, the rate setting program of the Department of Health will no longer be setting reimbursement rates for MICU programs. By assuring that MICU vehicles will be operating at a reasonable minimum volume, however, these certificate of need criteria will promote efficiency through economies of scale and thereby contribute to containing unit costs and charges. This is accomplished by requiring that MICU programs cover an area and a population that will generate an appropriate level of demand and that only the designated hospital provide MICU service within that area. In addition, fixed costs are controlled by limiting the total number of vehicles and the associated staff and equipment through the certificate of need process.

#### Regulatory Flexibility Statement

Since only hospitals having over 100 employees would be capable of qualifying for a certificate of need for an Advanced Life Support program, no recordkeeping, reporting, or other compliance requirements are placed upon small businesses, as that term is defined in N.J.S.A. 52:14B-16 et seq., by the proposed rules.

Full text of the proposed new rules follows:

#### CHAPTER 8:33N

#### CERTIFICATE OF NEED: ADVANCED LIFE SUPPORT PROGRAMS MOBILE INTENSIVE CARE UNIT (MICU) AND CRITICAL CARE TRANSPORT UNIT (CCTU)

#### SUBCHAPTER 1. REQUIREMENTS FOR CERTIFICATION OF NEED

##### 8:33N-1.1 Scope

(a) The Department of Health currently licenses emergency medical vehicles that operate in the State of New Jersey. The rules in this chapter set forth the criteria by which the Department of Health will evaluate through its certificate of need program any applications that are submitted for mobile intensive care units (MICUs) (including both those which transport patients and those which do not transport patients) as well as critical care transport units (CCTUs) that provide interhospital transport of patients.

(b) A certificate of need is required to initiate MICU/CCTU service; to add operational vehicles (including seasonal vehicles); or to change the primary or secondary service area for existing units.

(c) The standards included in this chapter apply exclusively to and identify standards for review of the certificate of need application for MICU/CCTU services.

8:33N-1.2 Definitions

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

“Advanced life support” (ALS) means an advanced level of prehospital, interhospital, and emergency service care which includes basic life support functions, cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, intravenous therapy, administration of specific medications, drugs and solutions, use of adjunctive ventilation devices, trauma care, and other techniques and procedures authorized by the Commissioner.

“Approved mobile intensive care unit” or “approved critical care transport unit” means a mobile intensive care unit or critical care transport unit authorized by the Department to serve a specific population, geographic area, or political entity.

“Available” means ready for immediate use (pertaining to equipment, vehicles, and personnel), or immediately accessible (pertaining to records).

“Base station physician” means any physician based in a hospital who provides medical control to advanced life support personnel by radio or telephone, as part of an authorized mobile intensive care program.

“Basic life support” means a level of prehospital care which includes patient stabilization, airway clearance, external closed chest cardiopulmonary resuscitation, control of hemorrhage, initial wound care, fracture stabilization, victim extrication, and other techniques and procedures authorized by the Commissioner.

“Commissioner” means the New Jersey State Commissioner of Health.

“Consortium” means a group of hospitals providing mobile intensive care service in a region designated by the Commissioner and coordinated by a regional communication coordinating center.

“Critical care transfer” means the transfer of a seriously ill or injured patient from one medical facility to a more specialized medical facility for treatment and/or testing.

“Critical care transport unit” (CCTU) means a licensed emergency ambulance specially equipped and staffed, at a minimum, with a physician or nurse plus a paramedic and a driver, which provides advanced life support care for patients requiring interhospital transfer.

“Department” means the New Jersey State Department of Health.

“Emergency medical technician” (EMT) means an individual who has completed a course of instruction and who has been issued certification by the Commissioner to provide basic life support services.

“Governing body” means the organization, person, or persons holding legal responsibility for the operation of a hospital, health care facility, business, or other agency.

“Health care facility” means a facility so defined in the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq.

“HIV” means human immunovirus.

“Interhospital transfer” means medical services provided to a patient before and during transportation between hospital facilities and upon arrival within those facilities.

“Medical control” means direction by a hospital-based physician of basic and/or advanced life support services delivered in the field by authorized personnel from a licensed emergency room.

“Mobile intensive care” means advanced life support as defined in N.J.S.A. 26:2K-7.20.

“Mobile intensive care nurse” means a registered professional nurse employed or voluntarily engaged in the delivery of mobile intensive care or critical care transport as a primary crew member of an approved mobile intensive care unit.

“Mobile intensive care paramedic” means a person trained in advanced life support services and certified by the Commissioner to render advanced life support services as part of a mobile intensive care unit.

“Mobile intensive care unit” (MICU) means a specialized emergency medical service vehicle staffed by mobile intensive care paramedics or mobile intensive care nurses trained in advanced life support nursing and operated for the provision of advanced life support services under the direction of an authorized hospital.

“Off-line medical control” means medical control exercised through use of training, protocols, quality-assurance reviews, and direct personnel supervision.

“On-line medical control” means medical control as directed by a hospital-based physician via radio or telephone communication with personnel outside of the hospital.

“Patient” means any person utilizing services licensed under this chapter.

“Primary service area” means the area of the State designated to a specific mobile intensive care program for the provision of advanced life support services.

“Provider” means any person, public or private institution, or agency which is providing mobile intensive care/critical transport services.

“Regional coordinating center” means a hospital designated by the Commissioner to coordinate the mobile intensive care system within a designated region and having duties and responsibilities as specified in N.J.A.C. 8:41.

“Secondary service area” means the area of the State designated to a mobile intensive care program for the provision of backup advanced life support services.

8:33N-1.3 Exemptions from certificate of need requirements

(a) This chapter shall not apply to providers which are based in other states when the provider is:

1. Transporting a patient through New Jersey from an out-of-State location to an out-of-State location; or
2. Transporting a patient from an out-of-State location to a New Jersey location.

(b) The provisions of this chapter shall not apply to services provided by an agency of the government of the United States.

8:33N-1.4 Submission of a certificate of need application

(a) Applications for the establishment of new services or for increasing the number of vehicles of preexisting services will be competitively reviewed pursuant to batching procedures set forth in N.J.A.C. 8:33-1.5. The following schedule will apply for the submission of certificate of need applications for ALS-MICU/CCTU programs:

Deadlines for submission	Cycle Begins
December 1	January 15
June 1	July 15

(b) No applications for ALS-CCTUs will be accepted until June 1, 1989.

8:33N-1.5 Types of applications

The application shall specify which type of service the applicant seeks to provide: Mobile Intensive Care Unit (Non-Transporting); Mobile Intensive Care Unit (Patient Transporting); and/or Critical Care Transport Units.

8:33N-1.6 Financial information

(a) The applicant shall demonstrate the financial feasibility of the proposed project.

(b) The applicant shall provide the estimated rate to be charged per call detailing any variations that may occur within that rate.

8:33N-1.7 Need criteria; MICU

(a) There is a need for a minimum of one MICU vehicle per county, without regard to the other criteria noted in this section.

(b) The applicant shall demonstrate compliance with each of the three criteria in (c) below, unless:

1. The criterion in (a) above is applicable; or
2. The Commissioner makes a finding that, despite lack of full compliance with one or more of the four criteria, there is compelling evidence that additional MICU service is needed in the area to assure a minimal acceptable level of access to, and quality of, prehospital emergency ALS service.

(c) The applicant shall supply data regarding its proposed primary service area for a minimum of 12 months prior to the filing of the certificate of need application that will address how each of the following criteria applies to the proposed MICU service:

1. One vehicle per 100,000 residents in the primary service area.  
2. The MICU vehicles currently serving the proposed primary service area have response times in excess of 15 minutes and/or are unable to respond to 10 percent or more of the calls they receive. An existing MICU hospital which is proposing to add vehicles shall document that the missed calls are not caused by avoidable downtime.

3. The applicant shall project a minimum level of future utilization of 2.7 ALS completed calls per vehicle per day for the first six months of service and three ALS completed calls per vehicle per day after the first six months of service. The projection shall be based on missed calls and high volume of ALS completed calls by existing MICUs and future population growth.

(d) An existing MICU resource hospital approved for at least one full-time MICU vehicle may apply for a part-time vehicle (less than 24 hours per day, seven days a week) if it can document need for at least 12 hours of service per day and at least 1.5 ALS completed calls per vehicle per day in the proposed primary service area. Any increase in hours of service per day beyond what is specified in the certificate of need approval for a part-time vehicle requires full, batched certificate of need review.

#### 8:33N-1.8 Need criteria; CCTU

(a) The applicant for a CCTU certificate of need shall, in conjunction with the area hospitals for which expansion of service is sought, shall provide data for one year prior to application which documents a need for service expansion. This data shall include downtime due to vehicle maintenance and missed calls (including a break down of requests for services unmet).

(b) The applicant for new services shall provide all available data which document the number of hospital critical care transfers that occurred in its proposed service area for a period of 12 months prior to application.

#### 8:33N-1.9 Back-up vehicle

(a) The service providers shall have back-up vehicles.

1. MICU back-up vehicles do not require certificate of need approval. These vehicles shall be utilized for back-up services only and their use and reason for use documented and submitted to the Office of Emergency Medical Services (OEMS) on a quarterly basis. All back-up MICUs shall comply with all OEMS licensing rules at N.J.A.C. 8:41. Vehicles which transport patients shall also comply with licensing rules at N.J.A.C. 8:40.

2. If the provider has a total of one or two approved MICU vehicles, a one-to-one back-up vehicle to operational vehicle is required. For each additional two operational vehicles, one back-up vehicle will be required.

(b) No back-up vehicles are required for CCTU services.

#### 8:33N-1.10 Seasonal vehicle

A mobile intensive care hospital shall not operate an additional vehicle on a seasonal basis without first obtaining a certificate of need in accordance with this chapter.

#### 8:33N-1.11 Data requirements

(a) For existing MICU providers, the applicant will provide a copy of the MICU quarterly reports submitted to the Office of Emergency Medical Services for a period to cover no less than 12 months prior to the submission of an application.

(b) Any application for services not including the data requested will be considered incomplete.

#### 8:33N-1.12 Licensing track record

All hospital applicants will be evaluated on past licensure track record performance and adherence to past certificate of need conditions.

#### 8:33N-1.13 Access

(a) All applicants shall be required to submit with the application a policy which will provide for treating/transporting all patients regardless of ability to pay.

(b) All applicants shall submit with the application proposed eligibility criteria for provision of free service.

(c) All applicants shall provide with the application a copy of the service providers policy for treating/transporting HIV positive individuals.

(d) All applicants shall state in the application that they will comply with State and Federal anti-discrimination laws.

#### 8:33N-1.14 Service area

(a) Each applicant shall indicate in the application specific proposed primary and secondary service areas. The primary service area shall be that for which the applicant will be responsible for providing direct services; the secondary service area shall be that for which the applicant will provide back-up services for an existing provider. The HSA and the Department will determine the reasonableness of proposed primary and secondary service areas.

(b) The applicant shall indicate whether and to what extent the proposed primary and secondary service areas are currently included in the primary or secondary service areas of existing MICU providers.

(c) A certificate of need is required to make any change to the primary and secondary service areas designated by the Commissioner.

#### 8:33N-1.15 Impact on existing providers

All applicants shall demonstrate that the service to be provided will not adversely impact on the current provider(s).

#### 8:33N-1.16 General requirements for all categories of mobile intensive care/critical care transport programs

(a) All services under this chapter shall comply with all ALS-MICU/CCTU criteria.

(b) Only New Jersey licensed general hospitals may submit MICU/CCTU applications. Any contractors to be used in delivering services for the applicant hospital shall be identified in the certificate of need application.

(c) A hospital will, within six months of approval as a mobile intensive care/critical care transport program, begin provision of mobile intensive care/critical care transport services in the designated service area(s). A detailed description of the services to be provided through any contractor shall also be included in the application.

(d) A hospital approved by the Commissioner to operate a mobile intensive care program of one or more units shall provide service to the designated area on a 24 hour a day, seven day a week basis, except that seasonal or limited hour vehicles shall operate in accordance with the provisions of the Commissioner's designation. This provision is not applicable to critical care transport units.

(e) A mobile intensive care program will provide reliable service to all designated service areas. An operational mobile intensive care/critical care transport unit will be available to respond to a minimum of 90 percent of calls for which it would be dispatched.

(f) Each designated mobile intensive care unit will be capable of a response time not to exceed a maximum of 15 minutes (with an optimal time considered to be six to eight minutes for cardiac arrest patients) from time of dispatch to 90 percent of calls within its primary service area. This provision is not applicable to critical care transport units.

(g) Each mobile intensive care program will provide a back-up mobile intensive care vehicle service. If the provider has a total of one or two approved MICU vehicles, a one-to-one back-up vehicle to operational vehicle ratio is required. For each additional two operational vehicles, one back-up vehicle will be required.

(h) Each MICU/CCTU program shall comply with licensure requirements at N.J.A.C. 8:41. All vehicles which also transport patients shall also comply with licensure requirements at N.J.A.C. 8:40.

(i) Each approved MICU service shall participate in communication coordination with one of the eight currently existing Regional Communication Coordinating Centers as specified in N.J.A.C. 8:41 and document participation in a centralized dispatch procedure in its proposed service area.

(j) The governing body of the hospital shall have granted formal approval of the hospital's certificate of need application. Evidence of this approval shall be submitted with the certificate of need application.

(k) The applicant shall have an intensive/coronary care unit, and an emergency department open 24 hours a day with an in-house physician capable of receiving and providing definitive care to critical patients who have been treated by advanced life support personnel.

(l) Applicant hospitals that do not provide emergency room services or provide emergency room services on a limited basis (less than 24 hours a day) may apply for MICU services only with a co-applicant hospital which is an existing approved MICU resource hospital and which will provide medical direction for the ALS services by qualified emergency physicians 24 hours a day, seven days per week.

(m) Letters of support from basic life support (BLS) providers which indicate intent to utilize the service proposed (MICU only) or documentation of efforts to obtain such letters shall be submitted as part of the certificate of need application.

(n) Formal written agreements with contracting hospitals which document intent to use the service proposed (CCTU only). This information shall be submitted as part of the certificate of need application.

#### 8:33N-1.17 Medical director required

The applicant shall designate a licensed physician, experienced in the provision of emergency care, as required by N.J.A.C. 8:41, who shall be responsible for on-line and off-line medical control of the mobile intensive care/critical care transport program as specified in this chapter.

#### 8:33N-1.18 HIV criteria

(a) The following documents shall be submitted with the application:

1. A copy of the HIV education program for all staff;
2. A copy of the universal precautions program appropriate to the service to be provided; and
3. A copy of the institutional/service providers written policy assuring non-discrimination to HIV infected individuals (HIV specific).

(b) All of the documents in (a) above shall be reviewed and approved by the Division on AIDS Prevention and Control.

(c) The applicant shall enter into a formal written affiliation agreement, as specified by the Division on AIDS Prevention and Control.

#### 8:33N-1.19 Competitive review

(a) Where need for either a MICU or a CCTU has been demonstrated and more than one applicant has filed a certificate of need to serve the same primary service area, the Department may approve only the number of applications necessary to fulfill that need. In making that determination, the Department will give priority to the applicant or applicants which, relative to all competing projects, most clearly demonstrate the fullest compliance with the following:

1. Compliance with all existing rules regarding MICU/CCTU service;
2. Provision of the highest level of indigent service;
3. Provision of a sliding fee scale pay mechanism;
4. Conformance with need in the area to be served;
5. Reception of the endorsement of the Health Systems Agency;
6. Demonstration of the MICU/CCTU program's financial feasibility and cost effectiveness;
7. Submission of formal written agreements with basic life support (BLS) providers which indicate intent to utilize the service proposed (MICU only);
8. Submission of a formal written agreement with contracting hospitals which document intent to use the service proposed (CCTU only);
9. Demonstration of lowest response time; and
10. Past licensure track record performance and adherence to past certificate of need conditions.

## (a)

### DIVISION OF HEALTH PLANNING AND RESOURCE DEVELOPMENT

#### Certificate of Need: Application and Review Process Proposed Amendments: N.J.A.C. 8:33-1.5 and 2.8

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner,  
Department of Health (with approval of the Health Care  
Administration Board).

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.  
Proposal Number: PRN 1989-67.

Submit comments by March 8, 1989 to:  
John A. Calabria, Chief  
Health Systems Services  
New Jersey Department of Health  
CN 360, Room 604  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The Department of Health, in conjunction with the Statewide Health Coordinating Council (SHCC), is proposing a revision in certificate of need batching requirements through amendments to its existing certificate of need rules.

"Batching" is the process in which certificate of need applications for the establishment of certain types of health care facilities and services are accepted by the State Department of Health at specified times of the year and reviewed competitively.

N.J.A.C. 8:33-1.5(d) provides a listing of the dates when applications for certificates of need for various batched health services are accepted and reviewed by the Department. All of the currently "batched" health care services are scheduled for review twice a year.

The proposed amendments to N.J.A.C. 8:33-1.5 and 2.8 would not require batching for applications submitted by New Jersey hospitals proposing to take the unique step of converting all licensed acute care beds to any non-acute care licensure category(ies), through merger/acquisition (transfer of ownership) projects or through independent action, to which batching criteria would otherwise apply. Such applications could therefore be submitted for review according to the Calendar for non-batched Certificate of Need review as set forth at N.J.A.C. 8:33-1.5(c). However, all such applications must undergo the full certificate of need review process beginning in the cycle within which they apply.

In addition to permitting the more timely processing of applications to close underutilized acute care beds and/or facilitate hospital mergers, the amendments resolve a procedural inconsistency within the certificate of need rules when hospitals submit a single application that may involve components ordinarily subject to several different batching schedules (for example, long term care, intermediate and special psychiatry, capital).

#### 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, hospitals and health care services, and health facility cost containment programs. . . ."

The proposed amendments will permit applications for closure of underutilized acute care beds to be submitted in a more timely manner. They also provide for more timely processing of certificate of need applications in cases where undue delay might jeopardize the successful implementation of hospital mergers which would achieve desirable public goals. Eliminating the batching requirement as set forth in the proposed amendments is therefore expected to have a positive social impact.

#### Economic Impact

The proposed amendments are expected to have a positive economic impact by permitting the more timely conversion of underutilized acute care beds. The current Policy Manual for Planning and Certificate of

Need Reviews of Long-Term Care Facilities and Services within the State of New Jersey (N.J.A.C. 8:33H) already grants preference to facilities converting excess acute care capacity. The rules further state that if a hospital requests conversion of all the acute care beds in the facility to non-acute use, the application may be approved in the absence of documented bed need, thus generally removing these applications from competitive review on the basis of need. Preference is also given in the competitive review section of the current Intermediate Adult and Special Psychiatric Bed Standards (N.J.A.C. 8:43E-5) to projects which can be implemented in the "most cost effective and efficient manner, measured by . . . reduction of excess acute care bed capacity in the area." Moreover, the review of applications for conversion of all acute care beds to alternative levels of care remains subject to all applicable planning and certificate of need regulations. The proposed policy addresses the question of submission dates only.

#### Regulatory Flexibility Statement

All New Jersey acute care hospitals employ more than 100 full-time employees and do not fall into the category of small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq (P.L. 1986, c.169).

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

8:33-1.5 Batching cycles and deadlines dates

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

(e) **Applications for New Jersey hospitals to convert all licensed acute care beds (medical/surgical, pediatric, obstetric, or ICU/CCU) to any non-acute care licensure category(ies), through merger/acquisition (transfer of ownership) projects or through independent action, to which batching criteria as described at N.J.A.C. 8:33-1.5 and 2.8 otherwise would apply, are not required to be batched. All such applications shall undergo the full certificate of need review process beginning in the cycle within which they apply.**

8:33-2.8 Batching

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

(d) **Applications for New Jersey hospitals to convert all licensed acute care beds (medical/surgical, pediatric, obstetric, or ICU/CCU) to any non-acute care licensure category(ies), through merger/acquisition (transfer of ownership) projects or through independent action, to which batching criteria as described at N.J.A.C. 8:33-1.5 and 2.8 otherwise would apply, are not required to be batched. All such applications shall undergo the full certificate of need review process beginning in the cycle within which they apply.**

## HUMAN SERVICES

### (a)

#### DIVISION OF MENTAL HEALTH AND HOSPITALS

##### Community Mental Health Services

#### Proposed Repeals: N.J.A.C. 10:37-5.6 through 5.11 and 5.16 through 5.24

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:9A-1 through 11 and 30:4-27.1 et seq., especially 30:4-27.5.

Proposal Number: PRN 1989-60.

Submit written comments by March 8, 1989 to:

Alan Kaufman, Director  
Division of Mental Health and Hospitals  
13 Roszel Road  
Princeton, NJ 08540

The agency proposal follows:

#### Summary

The Division of Mental Health and Hospitals proposed new rules for N.J.A.C. 10:37 in the October 3, 1988 New Jersey Register at 20 N.J.R. 2427(d). It was the Division's intent to repeal all of Article II (N.J.A.C. 10:37-5.6 through 5.11) and Article III (N.J.A.C. 10:37-5.16 through

5.24). Due to an oversight, the rules were not proposed for repeal. The rulemaking at 20 N.J.R. 2427(d) was unclear regarding the repeal of all provisions related to these two program elements. At this time, the Department is proposing the repeal of the rules which applied to Screening and to Screening Outreach, prior to the new legislation, N.J.S.A. 30:4-27.1 et seq. (P.L. 1987, c.116), as they are no longer necessary.

#### Social Impact

The social impact of the proposed repeals affects primarily those in the target groups designated by the program elements, which are delineated in the rulemaking published at 20 N.J.R. 2427(d).

#### Economic Impact

The proposed repeals would have an economic impact on those targeted by the program elements and those agencies which will be providing services, as indicated in the rulemaking published at 20 N.J.R. 2427(d).

#### Regulatory Flexibility Statement

The proposed repeals will have no impact on small businesses in New Jersey, as they are defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The program elements proposed for repeal are operated by non-profit hospitals or community mental health centers and the Department does not believe that these agencies are small businesses. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:37-5.6 through 5.11 and 5.16 through 5.24.

### (b)

#### DIVISION OF YOUTH AND FAMILY SERVICES

##### Personal Attendant Services Program

#### Proposed New Rules: N.J.A.C. 10:133

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4G-13 et seq.

Proposal Number: PRN 1989-58.

Submit comments in writing by March 8, 1989 to:

Steven J. Valli  
Office of Adult and County Social Services  
Division of Youth and Family Services  
CN 717  
1 South Montgomery Street  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

This proposal establishes rules to govern the Personal Attendant Services Program (Program) in the Department of Human Services. Based on the provisions of N.J.S.A. 30:4G-13 et seq. (P.L. 1987, c.350), the Program provides between 10 and 40 hours of personal attendant services to persons between the ages of 18 and 65 with chronic physical disabilities. The Program is administered by designated county agencies approved by the Commissioner of the Department of Human Services. The personal attendant services include routine, non-medical tasks that are directly related to maintaining the eligible individual's health and independence. The purpose of the Program is to enable these individuals to remain in their homes and communities, to be employed or receive training or education related to employment, and to avoid institutionalization.

The proposal sets forth rules regarding the purchase of and contracts for the provision of personal attendant services. The rules include rates of reimbursement to providers for personal attendant services provided to eligible individuals, and a client sliding fee scale for payments by eligible individuals for services received.

#### Social Impact

The proposed new chapter will provide a positive social impact on the lives of individuals with chronic physical disabilities in New Jersey. The Program will provide a means by which individuals with physical disabilities can remain employed, pursue training or education for employment, and avoid long-term institutionalization.

The rules proposed will establish the procedure for the delivery of services to eligible individuals with physical disabilities between the ages of 18 and 65 in all 21 counties in the State of New Jersey. It is expected that the Program, through the provision of personal attendant services to persons with disabilities, will prevent costly and socially isolating long-term institutionalization. Such services will also enable persons with disabilities to be employed or prepare for employment in order to become self-sufficient and the social benefit for people with disabilities is therefore of great significance. For the general public, the benefit of fuller integration of people with disabilities will provide for a more representative society.

#### Economic Impact

No adverse economic impact is anticipated from the proposed new rules. The full cost of the Personal Attendant Services Program has been appropriated through the enabling legislation. Currently, \$5,000,000 has been appropriated to implement this program, with \$2,000,000 from general revenues and \$3,000,000 from casino revenues. A maximum of 15 percent of this amount has been designated for administrative expenses.

A sliding fee schedule has been established to enable expansion of service to eligible persons under the Personal Attendant Services Program.

The economic impact on the target population of physically disabled individuals is expected to be very positive. These individuals will be able to remain employed or will be able to prepare for employment, thus gaining the skills necessary for future economic self-sufficiency. The program will also prevent expensive institutionalization and therefore provide a cost-effective alternative to such long-term placements.

The providers of attendant services will also be positively affected through the reimbursement and payments to them for personal attendant services rendered. The jobs created will provide further economic benefit to the economy in New Jersey.

#### Regulatory Flexibility Statement

This proposal does not require a regulatory flexibility analysis as it does not impose any reporting or recordkeeping requirements on small businesses, as that term is defined in N.J.S.A. 52:14B-16 et seq. Requirements are imposed on individuals, or on non-profit agencies (which the Department does not consider small businesses).

Full text of the proposed new rules follows:

### CHAPTER 133

#### PERSONAL ATTENDANT SERVICES PROGRAM

##### SUBCHAPTER 1. GENERAL PROVISIONS

###### 10:133-1.1 Purpose

Pursuant to the provisions of N.J.S.A. 30:4G-13 et seq. (P.L. 1987, c.350), the Department of Human Services intends to provide support to individuals with chronic physical disabilities in meeting their daily needs for personal care and assistance with activities of daily living. The Personal Attendant Services Program has been created to provide this support.

###### 10:133-1.2 Scope

These rules apply to all activities and persons participating in the Personal Attendant Services Program, including, but not limited to, applicants, recipients, personal attendants, and county agencies administering the program.

###### 10:133-1.3 Definitions

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

"Chronic physical disability" means a severe impairment of a permanent nature which so restricts a person's ability to perform essential activities of daily living that the person needs assistance in order to maintain the person's independence and health.

"Commissioner" means the Commissioner of the Department of Human Services.

"Department" means the Department of Human Services.

"Designated county agency" means a county office on the handicapped or other county agency designated by the county government, subject to approval by the Commissioner, to administer in that county the Personal Attendant Services Program.

"Personal attendant" means a person other than a family member who meets the qualifications with regard to training, equivalent work experience or certification established in these rules (see N.J.A.C. 10:133-5) and who provides personal attendant services to a person who is eligible for the Personal Attendant Services Program.

"Resident" means a person who is a domiciliary of New Jersey for other than a temporary purpose and who has no present intention of moving from the State.

"Personal attendant service" means health and chore related tasks performed by a personal attendant and, if necessary, under the supervision of a registered professional nurse. Personal attendant services include, but are not limited to, assistance in essential daily activities such as bathing, dressing, and meal preparation; assistance with mobility, laundry and shopping; and driving or other forms of transportation.

"Self-directing" means a person's ability to make his or her own decisions regarding daily activities as well as major life decisions. A self-directing person is his or her own legal guardian and is certified as self-directing by a physician and has been determined "self-directing" based on the results of an assessment conducted by a social worker with an MSW (Masters in Social Work) degree or a registered professional nurse with a Bachelor's degree. (See N.J.A.C. 10:133-2.1(a)7.)

###### 10:133-1.4 Target population and priority for services

(a) For the purposes of the Personal Attendant Services Program, the target population is composed of those persons between the ages of 18 and 65 who have a chronic physical disability.

(b) Priority will be given, in the following order, to individuals who are:

1. Employed, full or part-time;
2. Receiving training or education related to employment; or
3. Living independently.

##### SUBCHAPTER 2. ELIGIBILITY

###### 10:133-2.1 Eligibility standards

(a) For the purposes of the Personal Attendant Services Program, an eligible individual shall meet the following standards:

1. An eligible individual shall be between the ages of 18 and 65 years of age and have a chronic disability;

2. An eligible individual shall be a resident of the State of New Jersey;

3. An eligible individual shall be in need of personal attendant services pursuant to a written personal attendant services plan prepared by the staff of the designated county agency in cooperation with the eligible individual;

4. An eligible individual shall be one who is capable of managing and supervising his or her personal attendant services, as determined by an assessment conducted by a social worker with an MSW degree or a registered professional nurse with a bachelor's degree and who is certified as "self-directing" by a physician;

5. An eligible individual shall be one who does not have a relative or other informal caregiver available to provide the services that the individual needs;

6. An eligible individual shall be one who lives in a private house or apartment, rooming or boarding house, or residential health care facility. The personal attendant services that the person shall receive shall be supplemental to, and not duplicative of, services provided to the person in the rooming or boarding house or residential health care facility pursuant to licensure requirements;

7. The attending physician for the eligible individual shall confirm in writing that the person is self-directed and requires no assistance in the coordination of therapeutic regimes, and that the personal attendant services will be adequate and appropriate to meet the person's needs; and

8. The eligible individual shall require no less than 10 and no more than 40 hours of personal attendant services per week.

(b) Individuals requesting exceptions to the requirement of (a)8 above shall follow these procedures:

1. A person otherwise eligible for personal attendant services who needs less than 10 or more than 40 hours of service shall request an exception in writing;

2. The written request for an exception shall be made to the Personal Attendant Services Program Administrator and must indicate the number of hours of service needed with justification for those hours. The justification shall include a copy of an assessment of the needs of the eligible person completed by a registered nurse or social worker;

3. Written requests for exception will be considered on a case-by-case basis. Decisions will be rendered by the Personal Attendant Services Program Administrator in accordance with the procedures outlined in N.J.A.C. 10:133-3.4.

### SUBCHAPTER 3. ASSESSMENT AND INDIVIDUAL SERVICE PLAN

#### 10:133-3.1 Assessment

(a) Within 30 days after a person has applied to receive personal attendant services, a member of the staff of the designated county agency in the county in which the person resides shall perform a social evaluation of the applicant to determine if the applicant meets the eligibility criteria.

(b) Within 30 days after a person has applied to receive personal attendant services, a member of the staff of the designated county agency shall perform a financial evaluation to determine the ability of the person or the person's spouse to pay for personal attendant services according to the sliding fee scale established pursuant to N.J.A.C. 10:133-4.3.

(c) The designated county agency shall notify the applicant in writing within 45 days from the date of application for services regarding the findings of the social and financial evaluations performed pursuant to (a) and (b) above.

#### 10:133-3.2 Individual personal attendant services plan

(a) If an applicant is determined to be eligible for the personal attendant services program, the designated county agency shall prepare a personal attendant services plan, in conjunction with the applicant. The services plan shall be designed to meet the applicant's specific needs for personal attendant services, based upon the social evaluation performed pursuant to N.J.A.C. 10:133-3.1(a).

(b) A personal attendant services plan shall include all of the following:

1. A list of personal attendant services to be provided;
2. The duration and frequency of personal attendant services;
3. An estimate of the total cost of personal attendant services; and
4. An estimate of the amount of money that the eligible person or the person's spouse is required to pay toward personal attendant services.

(c) The eligible person and the designated county agency shall revise the plan as frequently as necessary.

(d) The designated county agency shall perform a comprehensive social and financial evaluation of the eligible person annually.

(e) All evaluations (both social and financial) performed for personal attendant services and the personal attendant services plan shall be completed on forms prescribed by the commissioner.

(f) In the event an applicant is determined eligible for the personal attendant services program, and services cannot begin within 30 days from the date of the county agency notification of the applicant regarding the results of the social and financial evaluation performed pursuant to N.J.A.C. 133-3.1(a) and (b), such applicant shall be placed on a waiting list for services. An applicant's position on a waiting list shall be determined pursuant to the priorities established in N.J.A.C. 10:133-1.4(a) and (b). All determinations of an applicant's position on a waiting list shall be completed on forms prescribed by the Commissioner.

#### 10:133-3.3 Reviews

(a) An applicant or client may request a review of an agency denial, reduction or termination of services, or a failure to act upon a request for services within a reasonable time.

(b) Requests for reviews shall be made to the Director of the designated county agency, in writing, within 10 days of an adverse agency action or to the:

State Personal Attendant Program Administrator  
Division of Youth and Family Services  
One South Montgomery Street  
Trenton, New Jersey 08625  
(609) 292-7800

(c) Upon receipt of a review request the Director of the designated county agency or the State Personal Attendant Program Administrator shall attempt to resolve all disputes. The applicant or client shall receive a copy of the written results of the review within 15 days from the date a written review request is received by the designated county agency or the State Personal Attendant Program Administrator.

(d) Applicants or clients who disagree with the results of the reviews conducted in accordance with N.J.A.C. 10:133-3.3 (a) through (c) may request a hearing pursuant to N.J.A.C. 10:133-3.4. Instructions for such requests shall be incorporated into the written results noted in (c) above.

#### 10:133-3.4 Hearings/appeals

(a) Hearings under this subchapter shall be conducted pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) A hearing may be requested by calling or writing to the:

Administrative Hearings Coordinator  
Division of Youth and Family Services  
One South Montgomery Street  
Trenton, New Jersey 08625  
(609) 292-8715

(c) In all cases, a hearing must be requested within 90 days of the date of the adverse action, or within 30 days of receiving the review results noted in N.J.A.C. 10:133-3.3(c), whichever is later.

#### 10:133-3.5 Confidentiality and disclosure of information

(a) All personally identifiable information regarding applicants or clients under this program obtained or maintained under this program shall be confidential and shall not be released without the written consent of the applicant or client or their authorized agent except as noted in (b) and (c) below.

(b) Disclosure of information without the consent of the applicant, client, or his authorized agent shall be limited to purposes directly connected with the program pursuant to State law and rules.

(c) The prohibition of (a) above against unauthorized disclosure shall not be construed to prevent:

1. The release of statistical or summary data or information in which applicants or clients cannot be identified;
2. The release to the Attorney General or other legal representative of this State of information or files relating to the claim of any applicant, client or his authorized agent challenging the program's statutory or regulatory authority or a determination made pursuant thereto; or
3. The release of information or files to the State Treasurer or to their duly authorized representatives for an audit, review of expenditures, or similar activity authorized by law.

### SUBCHAPTER 4. CONTRACTING AND FEES

#### 10:133-4.1 Contracting for services

(a) The designated county agency shall contract with other service providers, including private individuals, for the provision of personal attendant services.

(b) The designated county agency shall develop a mechanism to employ individuals as personal attendants where appropriate and shall develop employment policies consistent with N.J.A.C. 10:133-5 for individuals working as personal attendants.

#### 10:133-4.2 Provider fees

(a) Fees for services under the Personal Attendant Services Program shall be based on an hourly rate to be paid to the contracting service provider or individual attendant for each hour of personal attendant service provided under this program.

(b) The reimbursement for personal attendant services shall be \$7.50 per hour on weekdays and \$8.50 per hour on weekends and holidays.

**HUMAN SERVICES**

**PROPOSALS**

(c) The fee for assessments of eligible individuals shall be \$70.00 for each initial assessment authorized by the designated county agency; \$35.00 for annual re-assessments; and \$20.00 for each follow-up assessment authorized by the designated county agency.

**10:133-4.3 Client sliding fee scale**

(a) The sliding fee scale for personal attendant services is based on the ability of the eligible person and/or the person's spouse to pay for these services. The client sliding fee scale shall apply only to an eligible person and the person's spouse whose combined annual gross income exceeds the State's applicable income eligibility limit for social services established below pursuant to the Social Services Block Grant Act (P.L. 97-35, 42 U.S.C. §1397 et seq.).

(b) Client failure to pay the appropriate share pursuant to the client sliding fee scale at (d) below without good cause shall be grounds for termination or suspension from the Personal Attendant Services Program.

(c) The client sliding fee scale schedule below shall be applied to eligible individuals and their spouses. The percentage column indicated on the fee scale denotes the percentage of the total cost of the service to be paid by the client.

(d) The Client Sliding Fee Scale is as follows:

ANNUAL INCOME		Percentage
Single (one person)	Couple (married)	
0-15,612	0-19,827	0%
15,163-15,512	19,828-20,177	1%
15,513-15,862	20,178-20,527	2%
15,863-16,212	20,258-20,877	3%
16,213-16,562	20,878-21,227	4%
16,563-16,912	21,228-21,577	5%
16,913-17,262	21,578-21,927	6%
17,263-17,612	21,928-22,977	7%
17,613-17,962	22,278-22,627	8%
17,963-18,312	22,628-22,977	9%
18,313-18,662	22,978-23,327	10%
18,663-19,012	23,328-23,677	11%
19,013-19,362	23,678-24,027	12%
19,363-19,712	24,028-24,377	13%
19,713-20,062	24,378-24,727	14%
20,063-20,412	24,728-25,077	15%
20,413-20,762	25,078-25,427	16%
20,763-21,112	25,428-25,777	17%
21,113-21,462	25,778-26,127	18%
21,463-21,812	26,128-26,477	19%
21,813-22,162	26,478-26,827	20%
22,163-22,512	26,828-27,177	21%
22,513-22,862	27,178-27,527	22%
22,863-23,212	27,528-27,877	23%
23,213-23,562	27,878-28,227	24%
23,563-23,912	28,228-28,577	25%
23,913-24,262	28,578-28,927	26%
24,263-24,612	28,928-29,277	27%
24,613-24,962	29,278-29,627	28%
24,963-25,312	29,628-29,977	29%
25,313-25,662	29,978-30,327	30%
25,663-26,012	30,328-30,677	31%
26,013-26,362	30,638-31,027	32%
26,363-26,712	31,028-31,377	33%
26,713-27,062	31,378-31,727	34%
27,063-27,412	31,728-32,077	35%
27,413-27,762	32,078-32,427	36%
27,763-28,112	32,428-32,777	37%
28,113-28,462	32,778-33,127	38%
28,463-28,812	33,128-33,477	39%
28,813-29,162	33,478-33,827	40%
29,163-29,512	33,828-34,177	41%
29,513-29,862	34,178-34,527	42%
29,863-30,212	34,528-34,877	43%
30,213-30,562	34,878-35,227	44%
30,563-30,912	35,228-35,577	45%

30,913-31,262	35,578-35,727	46%
31,263-31,612	35,728-36,277	47%
31,613-31,962	36,278-36,627	48%
31,963-32,312	36,628-36,977	49%
32,313-32,662	36,978-37,327	50%
32,663-33,012	37,328-37,677	51%
33,013-33,362	37,678-38,027	52%
33,363-33,712	38,028-38,377	53%
33,713-34,062	38,378-38,727	54%
34,063-34,412	38,728-39,077	55%
34,413-34,762	39,078-39,427	56%
34,763-35,112	39,428-39,777	57%
35,113-35,462	39,778-40,127	58%
35,463-35,812	40,128-40,477	59%
35,813-36,162	40,478-40,827	60%
36,163-36,512	40,828-41,177	61%
36,513-36,862	41,178-41,527	62%
36,863-37,212	41,528-41,877	63%
37,213-37,562	41,878-42,227	64%
37,563-37,912	42,228-42,577	65%
37,913-38,262	42,578-42,927	66%
38,263-38,612	42,928-43,277	67%
38,613-38,962	43,278-43,627	68%
38,963-39,312	43,628-43,977	69%
39,313-39,662	43,978-44,327	70%
39,663-40,012	44,328-44,677	71%
40,013-40,362	44,678-45,027	72%
40,363-40,712	45,028-45,377	73%
40,713-41,062	45,378-45,727	74%
41,063-41,412	45,728-46,077	75%
41,413-41,762	46,078-46,427	76%
41,763-42,112	46,428-46,777	77%
42,113-42,462	46,778-47,127	78%
42,463-42,812	47,128-47,477	79%
42,813-43,162	47,478-47,827	80%
43,163-43,512	47,828-48,177	81%
43,513-43,862	48,178-48,527	82%
43,863-44,212	48,528-48,877	83%
44,213-44,562	48,878-49,227	84%
44,563-44,912	49,228-49,577	85%
44,913-45,262	49,578-49,927	86%
45,263-45,612	49,928-50,277	87%
45,613-45,962	50,278-50,627	88%
45,963-46,312	50,628-50,977	89%
46,313-46,662	50,978-51,327	90%
46,663-47,012	51,328-51,677	91%
47,013-47,362	51,678-52,027	92%
47,363-47,712	52,028-52,377	93%
47,713-48,062	52,378-52,727	94%
48,063-48,412	52,728-53,077	95%
48,413-48,762	53,078-53,427	96%
48,763-49,112	53,428-53,777	97%
49,113-49,462	53,778-54,127	98%
49,463-49,812	54,128-54,477	99%
49,813-50,162	54,478-54,827	100%

(e) Each eligible person shall provide verification of his or her income for determination of applicable fees upon acceptance into the Personal Attendant Services Program and annually thereafter.

1. Acceptable verification includes, but is not limited to, pay stubs, W-2 form or a photostatic copy of the actual 1040 form filed with the Internal Revenue Service, business records, pension statements and/or correspondence from employers or agencies (for example, Social Security Administration, State employment agencies.)

(f) If the costs of an eligible person's personal attendant services are covered in whole or in part by another State or Federal government program or insurance contract, the government program or insurance carrier shall be the primary payer and the Personal Attendant Services Program shall be the secondary payer.

(g) The eligible person receiving personal attendant services shall sign weekly vouchers attesting to the hours of service rendered, and the personal attendant or provider agency shall then be paid by the designated county agency.

SUBCHAPTER 5. PERSONAL ATTENDANTS

10:133-5.1 Requirements for personal attendants

(a) All individuals desiring to serve as personal attendants under the Personal Attendant Services Program shall be at least 18 years of age and shall meet the following minimum requirements:

1. The personal attendant shall complete an approved training course authorized by the New Jersey Department of Health as a homemaker/home health aide, or a long term facility nurse aide course; or

2. The personal attendant shall complete a certified training program in a hospital, rehabilitation facility, or a long-term care facility as an aide or personal attendant; or

3. The personal attendant shall complete a training course offered by the Department of Human Services for personal attendants; and

4. The personal attendant shall have no previous criminal record of conviction for other than minor traffic offenses as determined by the designated county agency. The decision regarding employment or non-employment of rehabilitated convicted offenders is made by the designated county agency pursuant to the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A.

SUBCHAPTER 6. COMPLIANCE WITH LAWS

10:133-6.1 Requirements of designated county agency

All designated county agencies shall abide by all laws and regulations concerning the employment of individuals hired to administer or work in the Personal Attendant Services Program including but not limited to the Rehabilitated Convicted Offenders Act and the Immigration Reform Act.

CORRECTIONS

(a)

THE COMMISSIONER

Mail, Visits and Telephones

Inspection of Outgoing Correspondence

Proposed Amendment: N.J.A.C. 10A:18-2.7

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1989-73.

Submit comments by March 8, 1989 to:

Elaine W. Ballai, Esq.  
Special Assistant for Legal Affairs  
Department of Corrections  
CN 863  
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment modifies N.J.A.C. 10A:18-2.7(b) to add to the list of State officials, in the existing rule, a counterpart list of Federal officials whose correspondence from inmates shall not be opened, read or censored by staff members of a Department of Corrections' correctional facility.

Social Impact

The proposed amendment provides a larger number of governmental officials with whom inmates may correspond without being concerned about whether the correspondence is opened, read or censored.

Economic Impact

The proposed amendment will have no significant economic impact because additional funding is not necessary to implement or maintain the amendment.

Regulatory Flexibility Statement

The proposed amendment impacts on inmates and the Department of Corrections and does not affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

10A:18-2.7 Inspection of outgoing correspondence

(a) (No change.)

(b) Outgoing mail shall not be opened, read or censored if it is considered legal correspondence or if it is addressed to:

1. The President of the United States;
2. The Vice-President of the United States;
3. Members of Congress;
4. Members of the Federal Parole Board;
5. The Director of the Federal Bureau of Prisons;

[1.]6. The Governor;

[2.]7. Members of the State Legislature;

[3.]8. Members of the State Parole Board; or

[4.]9. The Commissioner.

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

(b)

THE COMMISSIONER

Mail, Visits and Telephone

Inspection and Identification of Outgoing Publications

Proposed Amendment: N.J.A.C. 10A:18-4.7

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1989-72.

Submit comments by March 8, 1989 to:

Elaine W. Ballai, Esq.  
Special Assistant for Legal Affairs  
Department of Corrections  
CN 863  
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment modifies N.J.A.C. 10A:18-4.7(d) to delete the prohibition against opening, reading or censoring publications addressed by inmates to the State officials listed in the existing rule. The proposed amendment also deletes reference to the State officials listed in N.J.A.C. 10A:18-4.7(e).

Social Impact

The proposed amendment will have no significant impact because this requirement has been determined to be unnecessary since a publication sent to a State official would customarily be shared with other members of the general public as well.

Economic Impact

The proposed amendment will have no significant economic impact because additional funding is not necessary to implement or maintain the amendment.

Regulatory Flexibility Statement

The proposed amendment impacts on inmates and the Department of Corrections and does not affect small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq.

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

10A:18-4.7 Inspection and identification of outgoing publications

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

[(d) Outgoing publications shall not be opened, read or censored if addressed to:

1. The Governor;
2. Members of the State Legislature;
3. Members of the Parole Board;
4. Members of the Ombudsman Office; or
5. The Commissioner.]

[(e)](d) [Any outgoing publication] **Outgoing publications** [addressed to someone other than those cited in (d) above] shall not be opened, read or censored unless there is reason to believe that the publication contains disapproved content (see N.J.A.C. 10A:18-4.9) and then only with the prior approval of the Superintendent or his or her designee.

Recodify existing (f) and (g) as (e) and (f) (No change in text.)

## INSURANCE

### (a)

#### DIVISION OF ACTUARIAL SERVICES

#### Residual Market Equalization Charges (RMECs)

#### Proposed New Rules: N.J.A.C. 11:3-25

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6 and 17:30E-1 et seq.

Proposal Number: PRN 1989-80.

Submit comments by March 8, 1989 to:

Verice M. Mason  
Assistant Commissioner  
Legislative and Regulatory Affairs  
New Jersey Department of Insurance  
CN 325  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The New Jersey Automobile Full Insurance Underwriting Association (hereafter "Association") provides insurance coverage to persons who are unable to obtain it through ordinary market channels.

Pursuant to N.J.S.A. 17:30E-8 (P.L. 1983, c.65), the Association is permitted to submit to the Department of Insurance (hereafter "Department") a filing for a residual market equalization charge (hereafter "RMEC") in an amount necessary to offset the anticipated cash shortfall of the Association when other sources of income are found to be insufficient. A RMEC is a variable dollar charge which is applied to various types of automobile insurance policies the amount of which, when added to all other sources of Association income, will cause the Association to operate on a no profit, no loss basis.

Pursuant to Bulletin 88-1 dated February 1, 1988, the Department assessed a RMEC in the average amount of \$66.00 per vehicle. Thereafter, by Bulletin 88-4 dated July 29, 1988, the Department assessed a supplemental RMEC in the average amount of \$73.00 per vehicle. Therefore, for policies issued on or after August 1, 1988, the average RMEC assessed is \$139.00 on a per car, per coverage basis.

Pursuant to P.L. 1988, c.156, the RMEC provisions set forth at N.J.S.A. 17:30E-8 were amended. This legislation did not affect RMEC charges currently in place, although a RMEC in excess of current levels may not be approved by the Commissioner unless the income of the Association is insufficient to meet obligations in the ensuing year or a deferred payment plan has been implemented (P.L. 1988, c.156, section 12c.). The proposed rules address RMEC charges presently in effect and will be applicable to any RMEC charges that may be assessed in the future under procedures set forth in P.L. 1988, c.156.

In accordance with Department Bulletins 88-1 and 88-4, the RMEC is currently applied to all insured vehicles which are subject to imposition of "policy constants". Policy constants are flat dollar charges which provide income to the Association and which apply to various types of automobile insurance policies on a per car per coverage basis pursuant to N.J.S.A. 17:29A-37.1.

Pursuant to N.J.S.A. 17:29A-37.1, the Commissioner may assess policy constants on private passenger automobiles as well as commercial and self-insured vehicles. The Department has recently proposed new rules that would uniformly assess policy constants on all private passenger automobiles, including those private passenger automobiles that are insured under a commercial policy and that are self-insured (see 20 N.J.R. 2508(a)).

Similarly, the Department seeks to uniformly assess RMEC charges which are currently in place. Therefore, the following proposed new rules assess RMEC charges on all private passenger automobiles, including

private passenger automobiles that are insured under a commercial policy and that are self-insured.

A summary of the proposed new rules follows:

N.J.A.C. 11:3-25.1 sets forth the purpose and scope of the proposed new rules.

N.J.A.C. 11:3-25.2 contains the definitions of terms used throughout the proposed new rules.

N.J.A.C. 11:3-25.3 sets forth collection and remittance requirements for those insurers and self-insurers to which the proposed new rules apply.

N.J.A.C. 11:3-25.4 defines the term "private passenger automobile" to which the proposed new rules apply.

N.J.A.C. 11:3-25.5 sets forth verification requirements for those insurers and self-insurers to which the proposed new rules apply.

N.J.A.C. 11:3-25.6 provides for the possible imposition of penalties for failure to comply with the proposed new rules.

#### Social Impact

The proposed new rules will assist the Association in remaining a viable and stabilizing influence in the automobile market by providing additional revenue in order to continue to service and pay the claims on which it becomes or remains liable. The proposed new rules will also ensure that all motor vehicles of a private passenger type are uniformly subject to currently applicable RMECs regardless of whether the motor vehicle is self-insured or insured by the voluntary or residual markets. In addition, the application of the proposed new rules to the broadest possible base of insureds is consistent with the Legislature's intent and the above-mentioned objectives of the Association.

#### Economic Impact

The procedural requirements of the proposed new rules will not result in any significant or adverse economic impact upon insurers or self-insurers. Insurers, who are already subject to these requirements, may experience a minimal increase in costs due to modifications in their surcharge systems which are needed to comply with the requirements of these rules. Self-insurers will also experience a minimal increase in costs because they must remit RMEC charges to the Association and file certain specified information annually and quarterly with the Department and the Association.

The substantive requirements of the proposed new rules will, however, result in a significant adverse economic impact upon insureds who are not presently subject to RMECs, and upon some self-insurers, in that the imposition of the RMECs will result in having each insured subject to an increase in premium and each self-insurer responsible for an additional charge to the annual certificate of self-insurance filing fee. However, the impact will range in significance based upon the number of vehicles impacted per insured. For example, the economic impact for an insured or self-insurer with one motor vehicle will be different from that for an insured or self-insurer with a fleet of motor vehicles. The Department estimates that approximately 200,000 additional motor vehicles (above the estimated 4,000,000 motor vehicles currently charged) will be affected, at an estimated \$10,000,000 additional charge to the motor vehicle population.

The Department does not expect to incur any significant additional expenses as a result of the proposed new rules.

#### Regulatory Flexibility Statement

Some insurers and self-insurers affected by the proposed new rules may be small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The reporting and compliance requirements imposed upon insurers by these proposed new rules are that they collect a RMEC along with the policy premium, remit it to the Association within 10 days after the close of each month of receipt thereof, and annually file with the Department and the Association specified information regarding the collected and remitted charges. These procedures are equally applicable to small businesses. None of the above requirements is expected to have any significant adverse economic impact on insurer small businesses. Reporting and compliance requirements for self-insurers include forwarding the full amount of the RMEC to the Association before receiving a certificate of self-insurance from the Department, and filing quarterly reports of the number and types of motor vehicles covered. It is not anticipated that these requirements will have a significant adverse economic impact on self-insurer small businesses. To provide for uniform and consistent applicability of these rules, and to avoid granting any advantage to insurers or self-insurers which are small businesses, no differential treatment is accorded to them by these proposed new rules.

Full text of the proposal follows:

#### SUBCHAPTER 25. RESIDUAL MARKET EQUALIZATION CHARGES (RMECs)

##### 11:3-25.1 Purpose and scope

(a) This subchapter provides guidelines to identify the types of private passenger automobiles as defined in this subchapter which are subject to residual market equalization charges (RMECs) pursuant to N.J.S.A. 17:30E-8. This subchapter also establishes procedures for the collection and transmission of RMECs to the New Jersey Automobile Full Insurance Underwriting Association (Association).

(b) This subchapter applies to the following:

1. All private passenger automobile insurers that provide coverage (in the voluntary and residual markets in this State) for private passenger automobiles as defined in this subchapter;
2. All commercial automobile insurers that provide coverage (in the voluntary and residual markets in this State) for automobiles of a private passenger type; and
3. All self-insurers who own or lease under contract (for a continuous period of at least three months) self-insured automobiles of a private passenger type registered with the Division of Motor Vehicles under an annual certificate of self-insurance issued by the Department of Insurance pursuant to N.J.S.A. 39:6-52.

(c) RMECs are imposed on the following vehicles:

1. Private passenger automobiles as defined by this subchapter, written on private passenger automobile insurance policies in the voluntary and residual markets;
2. Private passenger automobiles as defined by this subchapter, written on commercial automobile policies in the voluntary and residual markets; and
3. Private passenger automobiles as defined by this subchapter, which are self-insured under a certificate of self-insurance issued on a calendar year annual basis by the Department pursuant to N.J.S.A. 39:6-52.

##### 11:3-25.2 Definitions

The following words and terms, when used in this subchapter, have the following meanings:

"Association" means the New Jersey Automobile Full Insurance Underwriting Association established pursuant to N.J.S.A. 17:30E-1 et seq.

"Classic automobile" means a motor vehicle which is 10 or more years old, which is used on a regular basis, and which has a value significantly higher than the average value of other motor vehicles of the same make and model year.

"Commissioner" means the New Jersey Commissioner of Insurance.

"Department" means the New Jersey Department of Insurance.

"Net direct car years of liability exposure" means direct bodily injury liability car years of exposure, after deducting returns for cancellations, but without adding reinsurance assumed or deducting reinsurance ceded, as determined by the board of directors of the Association and approved by the Commissioner.

"Net direct car years of physical damage exposure" means direct physical damage car years of exposure, after deducting returns for cancellations, but without adding reinsurance assumed or deducting reinsurance ceded, as determined by the board of directors of the Association and approved by the Commissioner.

"Owned" means legal title to and control of a private passenger automobile as defined in this subchapter. This definition shall include a private passenger automobile leased under contract for a continuous period of at least three months.

"Principal operator" means one who operates a motor vehicle more than any other person based upon the percentage of annual mileage driven by each operator. A person may only be designated as the principal operator of one vehicle, except where the number of vehicles exceeds the number of principal operators.

"Principally garaged" means located within the boundaries of the State of New Jersey for a total time period of at least three months per year, whether consecutive or non-consecutive.

"Residual market equalization charges" or "RMECs" mean amounts which, when added to all other sources of Association income, will cause the Association to operate on a no profit, no loss basis, but are in no event considered to include a policy constant levied pursuant to N.J.S.A. 17:29A-37.1.

##### 11:3-25.3 Collection of RMECs; remittance

(a) All private passenger and commercial automobile insurers and self-insurers which are subject to the provisions of this subchapter shall collect RMECs, pursuant to N.J.S.A. 17:30E-8, on private passenger automobiles as defined herein on a uniform net direct car year of liability exposure basis and a net direct car year of physical damage exposure basis (except as set forth at N.J.A.C. 11:3-25.4(b)(7) in the amounts approved by the Commissioner and in effect when each policy or certificate of self-insurance is issued or renewed.

1. Each insurer should assess six month policies one-half the approved RMEC and quarterly policies one-fourth the approved RMEC. The RMEC charge is prorated for motor vehicles that are added or deleted mid-term from any policy subject to this subchapter. In the case of additions, the applicable RMEC is prorated to the end of the policy term. In the case of deletions, the unearned RMEC collected is refunded to the insured.

2. Each insurer shall implement billing and collection procedures for the approved RMEC within 45 days after each approval date. All billings issued on or after the expiration of the 45 days, whether for new or renewal business, shall include the approved RMEC in the total policy premium. All new or renewal policies effective on or after the date the approved RMEC goes into effect and which have received initial billings prior to the insurer's implementation of the new billing and collection procedures must be related to reflect inclusion of the RMEC. Supplemental billings for these policies shall be issued no later than 60 days after the effective date of the approved RMEC.

3. Each insurer shall display the total amount of the RMEC, and its separate component charges by coverage or line, on the policy declaration page.

4. Each insurer utilizing billing systems designed to round premium charges to the nearest dollar may bill and collect the RMEC on the rounded basis.

5. Each self-insurer that obtains an initial certificate of self-insurance during the calendar year shall pay a prorated RMEC. The RMEC charged is in the same proportion to the RMEC approved as the number of remaining days (from the date such self-insurer is certified by the Department to December 31) of the applicable calendar year bears to the total number of days of that calendar year.

(b) Each insurer shall transfer the RMECs collected to the Association within 10 days after the close of each accounting month pursuant to the provisions set forth below.

1. All monies collected from the RMECs are to be transferred to the Association on a written basis. No other expenses are payable to or deductible from the RMECs transferred to the Association. All insurers, including Association servicing carriers, may charge the full RMEC in addition to any initial policy premium installment or deposit payment at the time the initial installment or deposit is due.

2. The RMECs are collected, where applicable, on all private passenger automobile liability and physical damage policies, and all commercial automobile liability and physical damage policies that insure automobiles of a private passenger type, issued or renewed in the voluntary or residual market with an effective date on or after January 21, 1988.

(c) Each self-insurer shall forward the RMEC charge to the Association before the Department shall issue an annual certificate of self-insurance.

1. The RMEC is collected, where applicable, for all coverages required by law, on all self-insured, private passenger automobiles as defined in this subchapter, which are intended to be covered under a certificate of self-insurance issued on a calendar year annual basis by the Department pursuant to N.J.S.A. 39:6-52. The charge is collected on all vehicles issued a certificate of self-insurance on or after January 21, 1988.

2. Each self-insurer shall report to the Department and the Association on a calendar year quarterly basis, within a time frame and on a form provided by the Commissioner, the number and types of motor vehicles added to or deleted from the self-insurer's inventory as of the last day of the last month of each quarter, with the exception of the last quarter of the calendar year. Upon receipt of the quarterly report, the Association shall, in the case of a net addition to the self-insurer's inventory, send the self-insurer a bill in the amount of pro rata charges due; in the case of a net deletion from the self-insurer's inventory, the Association shall credit the amount of the pro rata charges unearned on renewal of the certificate of self-insurance, except that if the self-insurer does not renew the certificate of self-insurance, the Association shall remit the amount of the pro-rata charge unearned to the self-insurer within 30 days after January 1 of the renewal year.

(d) A RMEC is not assessed on insured or self-insured private passenger automobiles where the principal operator is 65 years of age or older. Manual rules involving rating classifications are not used to determine principal operator status, if inconsistent with this subchapter.

(e) When any policy or certificate of self-insurance subject to imposition of the RMEC is cancelled, the Association shall refund any unearned RMEC collected to the relevant policyholder or self-insurer. The Association shall calculate the unearned RMEC on a pro-rata or short-rate basis, as applicable.

#### 11:3-25.4 Definition of private passenger automobile

(a) "Private passenger automobile" means an automobile, principally garaged in the State of New Jersey or principally garaged in another state if insured through the Association, of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; or a motor vehicle with a pick-up body, a van, a delivery sedan, a panel truck or a motorized camper type vehicle, principally garaged in the State of New Jersey or principally garaged in another state if insured through the Association, and owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, professional or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile. Motor vehicles owned by a governmental entity, agency or instrumentality thereof are not considered private passenger automobiles.

(b) The following motor vehicles which otherwise meet the definitions of private passenger automobile are also subject to the assessment of RMECs:

1. A pickup, panel truck, or van used in the business of the United States Government, by an employee of the Government if:

- i. It is owned by an individual or by a husband and wife who are residents of the same household;
- ii. It is not customarily used in any other occupation, profession or business of the insured other than farming or ranching; and
- iii. Liability coverage is limited in accordance with the Federal employee's use of the automobile in government business endorsement;

2. A motor vehicle issued a certificate of self-insurance by the Department of Insurance pursuant to N.J.S.A. 39:6-52, as authorized by N.J.S.A. 17:29A-37.1;

3. A dune buggy, but only if it is registered for street use;

4. A classic automobile as defined in this subchapter;

5. An electric powered automobile;

6. An amphibious vehicle;

7. A motor vehicle which shares its license plate(s) with an inventory of other motor vehicles for eventual sale by a person engaged in the business of selling such motor vehicles; for purposes of this subparagraph; RMECs are imposed on a per-plate per-coverage basis;

8. A motor vehicle in which the insurance policy covering the lender's and borrower's interest in the motor vehicle has lapsed and

is reissued to the lender pursuant to the financing agreement between such lender and borrower;

9. A motor vehicle, owned by a corporation, which is assigned to one or more corporate officers or employees; and

10. Any other motor vehicle, as determined by the Commissioner, which is available for private passenger use and not wholly related to business use.

#### 11:3-25.5 Verification statement

(a) On December 31 of each year, all private passenger automobile insurers, commercial automobile insurers and self-insurers to which this subchapter applies shall provide to the Commissioner, and the Manager of the Association, a certified statement containing the name, title, address and telephone number of the individual responsible for certifying and sending RMECs to the Association.

(b) The statement is sent to:

Actuarial Services  
State of New Jersey  
Department of Insurance  
20 West State Street  
CN 325  
Trenton, New Jersey 08625

#### 11:3-25.6 Penalty

Failure to comply with this subchapter may result in the imposition of sanctions by the Department including, but not limited to, sanctions pursuant to N.J.S.A. 17:33-2 and N.J.S.A. 17:30E-1 et seq.

(a)

## DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

### Licensing and Regulation of Auto Body Repair Facilities

#### Proposed Repeal: N.J.A.C. 11:14

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 39:13-1 et seq.

Proposal Number: PRN 1989-57.

Submit comments by March 8, 1989 to:

Verice M. Mason, Assistant Commissioner  
Legislative and Regulatory Affairs  
Department of Insurance  
CN 325  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

In 1983, N.J.S.A. 39:13-1 et seq. was enacted which provided for the licensure of automobile repair facilities by the Commissioner of Insurance. Rules were adopted to implement this statute (N.J.A.C. 11:14). These rules established a system for the licensure of auto facilities and also established standards and procedures necessary to protect the public from dishonest, deceptive and fraudulent practices in the repair of automobiles damaged by collision.

In 1985, N.J.S.A. 39:13-1 et seq. was amended so that the Division of Motor Vehicles would have the authority to regulate auto body repair facilities and not the Department of Insurance. The Division of Motor Vehicles recently adopted rules governing auto body repair facilities (N.J.A.C. 13:21-21).

The Department of Insurance repeal of its rules simply fulfills the legislative intent. It removes rules that are in an area that, since 1985, the Department of Insurance has not had the authority to regulate.

#### Social Impact

The proposed repeal will not create any social impact since the situation will not be any different than it was before. Since 1985 these rules have been unenforceable. The repeal merely reflects the current situation as it has existed since 1985.

**Economic Impact**

The repeal of these rules will have no economic impact for the reasons stated in the Social Impact Statement above.

**Regulatory Flexibility Statement**

The proposed repeal will not impose any new compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since the proposed repeal merely reflects the current situation as it has existed since 1985.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:14.

**LABOR****(a)****OFFICE OF THE CONTROLLER****Contributions, Records and Reports**

**Proposed Repeals: N.J.A.C. 12:16-10.**

**Proposed Amendments: N.J.A.C. 12:16-4.7, 13.4 and 13.7**

**Proposed New Rules: N.J.A.C. 12:16-22**

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), and 43:21-1 et seq., specifically 43:21-7, 43:21-11 and 43:21-14.

Proposal Number: PRN 1989-75.

Submit comments by March 8, 1989 to:

Alfred B. Vuocolo, Jr.  
Chief Legal Officer  
Office of the Commissioner  
Department of Labor  
CN 110  
Trenton, New Jersey 08625-0110

The agency proposal follows:

**Summary**

In reviewing N.J.A.C. 12:16, the Department discovered several sections that need to be amended in order to correct errors, reflect updated Departmental practices, and to clarify existing provisions. To accomplish these goals, the Department now proposes to amend three rules, repeal one subchapter and propose one new subchapter.

Specifically, the Department proposes to amend N.J.A.C. 12:16-4.7 to delete an incorrect Federal Unemployment Tax Act citation and to clarify the existing language.

The proposed amendment to N.J.A.C. 12:16-13.4 will impose a time limit for the filing of requests for penalty abatement consideration. The proposed amendment to N.J.A.C. 12:16-13.7 will clarify existing procedures with regard to wage reporting.

The proposed new rules at N.J.A.C. 12:16-22 set forth hearing procedures for issues concerning coverage, status, liability for contributions, reporting, refunds or rates of contribution.

N.J.A.C. 12:16-22.1 sets forth the scope of the proposed new rules. N.J.A.C. 12:16-22.2 outlines the application procedure for a hearing. N.J.A.C. 12:16-22.3 describes informal conference procedures, and N.J.A.C. 12:16-22.4 states that all formal hearings shall be held pursuant to the Administrative Procedures Act. N.J.A.C. 12:16-22.5 provides that the Commissioner shall make the final decision of the Department, and that appeals shall be made to the New Jersey Superior Court.

Finally, the Department proposes to repeal existing N.J.A.C. 12:16-10, which contains outdated hearing procedures, and reserve the subchapter for future use.

**Social Impact**

The proposed amendments will improve Departmental efficiency by providing streamlined methods of operation and by eliminating excess data and outdated records. Additionally, the proposed amendments will clarify ambiguities which exist in the current rules, which will help the Department, employers and the general public in complying with Departmental requirements.

The proposed new rules will enable employers to request and receive prompt hearings on matters that are of concern to them. The proposed hearing rules will also provide a standard framework by which the Department will operate its hearing process. The proposed repeal of the existing subchapter concerning hearing procedures will benefit the public by removing outdated, inapplicable procedures.

**Economic Impact**

The Department does foresee a possible increase in cost to employers as a result of one proposed amendment, N.J.A.C. 12:16-13.7, in that employers who fail to follow the rules concerning the submission of data may be fined. The fines have not been increased, but the reporting requirements have been modified so that offenders will be more easily recognized.

The Department expects to see some positive economic effects as a result of the proposed new rules, in that certain recordkeeping methods will be updated, which will make the Department more efficient.

**Regulatory Flexibility Statement**

The proposed amendment concerning wage reporting (N.J.A.C. 12:16-13.7) may impose additional reporting, recordkeeping and compliance requirements for businesses, some of which will be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the requirements are very minimal, and should cause no significant additional costs to affected businesses.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 12:16-10.

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

12:16-4.7 Back pay, residuals, non-resident aliens

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

(c) [Under Regulation 31.3306(c)(18)-1 of the Federal Unemployment Tax Act, services performed by non-resident aliens while they are in the United States on a temporary basis as non-immigrant students generally are not permitted to work for a wage or salary while they are in the United States. This type of service would be employment if the individual was hired to replace a regular employee; perform the same type of work, or if they were under any obligation to perform any service other than those incidental to training either during or after the training program.] **All wages paid to aliens are taxable and reportable under a valid Social Security number.**

12:16-13.4 Penalty abatement

(a) The Controller may remit or abate unpaid penalties **in whole or in part** for good cause if the employer fulfills the following requirements:

1. The employer makes a written request for penalty abatement consideration **within one year of the date of initial notification that a penalty has been assessed;**

2. The employer submits an affidavit [or other acceptable] **together with documentation providing a [valid] reason(s) why the report(s) for the period(s) in question were not filed completely, accurately or by the due date(s), and that there was no fraud or intentional disregard of the reporting requirements of the Department;**

3. All **quarterly** contribution reports **and employer reports of wages paid** have been filed;

4. All liability, other than the penalty for which abatement is being requested, has been paid.

(b) **All decisions made by the Controller concerning penalty abatement shall be the final administrative decision of the Department. An appeal of a final decision shall be made to the Appellate Division of the New Jersey Superior Court.**

12:16-13.7 Wage Reporting

(a) For the calendar quarter commencing July 1, 1984 and each quarter thereafter, each employer shall file a report with the Controller within 30 days after the end of each quarter in a form and manner prescribed by the Controller listing the name, social security number and wages paid to each employee and the number of base weeks worked by the employee during the calendar quarter. **If wages or base weeks are -0-, then the employer must enter -0- in the appropriate columns rather than leave the column blank.**

(b) (No change.)

## SUBCHAPTER 22. HEARINGS

## 12:16-22.1 Scope

All hearings involving any question of coverage, status, liability for contributions, reporting, refunds, or rates of contribution shall be conducted according to the procedure outlined in this subchapter.

## 12:16-22.2 Application

(a) Any written notice of determination by a representative of the Department as to any question of coverage, status, liability for contributions, reporting, refunds, or rates of contributions shall be deemed final, unless any party with an interest in the matter shall make written request for a hearing on the prescribed form within 15 days after the date of the notice.

(b) The form to be used for application for hearing is entitled "Request for Hearing" and is normally supplied with the written confirmation letter sent by the Controller's Chief Auditor at the conclusion of the Audit. If the purpose for requesting the hearing did not start from an investigation conducted by a representative of the Chief Auditor, the "Request for Hearing" form may be secured by making a written request for the form to the Chief Auditor.

(c) All completed requests shall be returned to the Chief Auditor within the required 15 days.

## 12:16-22.3 Informal conference

(a) All "Request for Hearing" forms will be reviewed in the Chief Auditor's Office to determine if the reason for dispute could be resolvable at a conference with a representative of the Chief Auditor.

(b) If the review of the form indicates that an informal conference is necessary, then a representative of the Chief Auditor will be assigned to contact the responsible individual to schedule the informal conference. If the informal conference proves unsuccessful, the case will be forwarded to the Office of Administrative Law.

(c) If the review of the form indicates that an informal conference would not be productive, then the employer will be notified that the case will be transmitted to the Office of Administrative Law.

## 12:16-22.4 Formal hearing

All hearings shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

## 12:16-22.5 Decision

(a) The Commissioner shall make the final decision of the Department.

(b) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

## COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

### (a)

#### DIVISION OF ENERGY PLANNING AND CONSERVATION

#### Technical Sufficiency Standards for Solar Energy Devices or Systems for the Purposes of Qualifying for a Sales and Use Tax Exemption

#### Proposed New Rules: N.J.A.C. 12A:55

Authorized By: Borden R. Putnam, Commissioner, Department of Commerce, Energy and Economic Development.

Authority: N.J.S.A. 54:32B-8.33 and 52:27F-11q.

Proposal Number: PRN 1989-65.

Submit comments by March 8, 1989 to:

Edward J. Linky, Esq.  
Chief Regulatory Officer  
Division of Energy Planning and Conservation  
101 Commerce Street  
Newark, New Jersey 07102

The agency proposal follows:

#### Summary

These proposed new rules provide technical sufficiency standards for solar energy systems and are designed to establish minimum criteria for the purpose of obtaining a sales and use tax exemption pursuant to P.L. 1977, c.465 (N.J.S.A. 54:32B-8). These rules are identical to rules adopted by the Department of Energy and previously codified at N.J.A.C. 14A:5 et seq., which expired on October 19, 1988, pursuant to Executive Order No. 66(1978).

P.L. 1987, c.365 transferred certain functions of the Division of Energy Planning and Conservation to the Department of Community Affairs, including the Energy Subcode. The Department of Community Affairs promulgated a new Energy Subcode with standards relating to solar systems for purposes of obtaining a property tax exemption. The Division of Energy Planning and Conservation asked the Attorney General to determine which agency had responsibility for the sales and use tax exemption standards in view of the legislative intent of Chapter 365 to consolidate certain energy matters in State government. The Attorney General has advised the Division that it has the authority to propose standards for purposes of qualifying for a sales and use tax exemption.

#### Social Impact

These proposed rules implement the legislature's intention to provide a positive economic stimulus for residential energy consumers to consider the purchase of qualifying solar devices. To the extent that consumers can save energy dollars, these standards will have a positive social impact.

#### Economic Impact

These rules should have a positive economic impact by giving an economic incentive to purchase appropriate types of solar devices. The savings in energy and stimulus to the contractor's installing such devices offset any loss of State revenue attributed to the tax exemption.

#### Environmental Impact

Solar energy is a renewable virtually non-polluting source of fuel for certain appropriate residential applications. These rules provide guidance to those devices which will qualify for sales and use tax exemptions. To the extent that these rules promote the use of increased solar energy which displaces fossil fuel generated electricity, they will have a positive effect on the environment.

#### Regulatory Flexibility Statement

The proposed new rules will help stimulate small business sales of the qualifying devices. They create a dispute resolution mechanism if there is a disagreement on which types of equipment qualify for the exemption. Thus, there is a minimal burden on small business as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposal follows.

### CHAPTER 55

#### TECHNICAL SUFFICIENCY STANDARDS FOR SOLAR ENERGY DEVICES OR SYSTEMS FOR THE PURPOSES OF QUALIFYING FOR A SALES AND USE TAX EXEMPTION

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 12A:55-1.1 Scope

These technical sufficiency standards for solar energy systems are designed to establish minimum criteria for the purpose of obtaining a sales and use tax exemption pursuant to P.L. 1977, c.465 (N.J.S.A. 54:32B-8).

##### 12A:55-1.2 Construction and amendment

(a) These rules shall be liberally construed to permit the Commissioner to effectively carry out his statutory functions and to insure the maximum conservation of energy sources within the State; and

(b) These rules may be amended by the Director of the Division of Energy Planning and Conservation, pursuant to authority of P.L. 1977, c. 465 (N.J.S.A. 54:32B-8).

##### 12A:55-1.3 Definitions

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

"Active system" means a solar energy system which converts solar radiation into thermal energy, and mechanically transfers the energy

through the use of pumps and fans for the purpose of heating, cooling or general energy needs of a building.

"Administrator" means the Commissioner of the Department of Commerce, Energy and Economic Development or his or her designee.

"Building" means any residential, commercial, or industrial structure.

"Collector" means a device that collects, absorbs and converts solar radiation into thermal energy and commonly includes glazing and/or other optical elements.

"Collector kit" means a collector supplied unassembled to the end user that includes all the component parts necessary to assemble the collector.

"Cost" means the purchase price.

"Direct gain" means the transmission of solar radiation directly into the space to be heated wherein the solar radiation is converted to thermal energy by absorption into the interior surfaces.

"Distribution system" means that portion of a solar energy system which transfers thermal energy from the point of collection, through pipes or ducts and/or, from the point of collection to end-use, and where applicable, includes a fan and/or pump, reverse flow protection, and an automatic airpurging valve.

"Eligible" means that a system or component thereof qualifies for an exemption pursuant to N.J.A.C. 12A:55-2.1.

"Glazing" means a transparent or translucent material which transmits solar radiation and minimizes loss of thermal energy, including glass, fiberglass, plastics and window films.

"Insulating device" means a fixed or movable exterior or interior device which prevents loss of thermal energy at night and in cold weather through glazing or vents, including insulating shutters, thermal curtains, window films and glazing.

"Passive system" means a solar energy system which utilizes natural convection or thermal radiation to maximize gains of thermal energy for heating and to minimize gains of thermal energy for cooling.

"Photovoltaic cell" means a device which converts solar radiation to electrical energy.

"Shading device" means a device which prevents direct solar gain, including overhangs, shades, and window films.

"Site-built collector" means a collector which must be assembled on-site and is not supplied as a collector kit.

"Solar domestic hot water system" means a system which converts solar radiation into thermal energy for the purpose of heating potable water.

"Solar energy" means energy which has recently originated in the sun, including direct and indirect solar radiation and intermediate solar energy from sources such as wind and sea thermal gradients.

"Solar energy system" means a system or component thereof which uses solar energy to provide all or a portion of the heating, cooling or general energy needs of a building.

"South" shall be defined as falling within the 90 degree envelope from 45 degrees East to 45 degrees West of true South.

"Storage device" means a device which stores solar energy.

"Sunspace" means a collector that also serves as a living space, including a sunroom, solarium, atrium, attached greenhouse and Florida room.

"Thermal storage wall" means a wall of massive material, such as masonry or water in containers, placed between the glazing and the heated space, including a trombe wall and water wall.

"Wind system" means a device which converts wind energy into usable electrical or mechanical energy.

## SUBCHAPTER 2. ELIGIBILITY CRITERIA

### 12A:55-2.1 Eligible solar energy systems

(a) The following solar energy systems shall be eligible for an exemption from sales and use taxes. The exemption shall be for 100 percent of the tax due on the cost unless stated otherwise.

1. Passive and hybrid systems of the following types, provided that the systems generate a net positive gain of thermal energy for heating and a net loss of thermal energy for cooling in the building.

i. Sunspaces and direct gain devices: The following components shall be eligible, provided that the sunspace or direct gain device contains, at a minimum, (a)li(1) through (5) below:

(1) South facing glazing;

(2) Distribution systems;

(3) Insulating devices having an R value of 4.0 or greater;

(4) Shading devices;

(5) Storage devices, including:

(A) Thermal storage walls.

(I) Load bearing thermal storage walls shall be eligible for an exemption for 50 percent of the tax due on the cost.

(II) Non-load bearing thermal storage walls shall be eligible for an exemption of the tax due on the cost thereof in accordance with the formula two square feet of slab for every one square foot of south facing glazing, not to exceed the wall area of the sunspace or room in which the direct gain device is located; or

(B) Mass floors. Such floors shall be eligible for an exemption of the tax due on the cost thereof in accordance with the formula two square feet of slab for every one square foot of south facing glazing, not to exceed the floor area of the sunspace or room in which the direct gain device is located;

(6) Equipment used solely as bracing or fastening for south facing glazing;

(7) Skylights and roof glazing.

2. Active systems and solar domestic hot water systems of the following types:

i. Collectors:

(1) Commercially manufactured collectors which meet the standards set by a nationally recognized testing organization, such as the Air-conditioning and Refrigeration Institute (ARI); Solar Rating and Certification Corporation (SRCC); Florida Solar Energy Center (FSEC); or International Association of Plumbing and Mechanical Officials (IAPMO).

(2) Collector kits which meet the standards specified in (a)2i(1) above;

ii. Distribution systems;

iii. Storage devices.

3. Solar electric generating systems of the following types:

i. Photovoltaic cells, including mounting racks, arrays, wires, batteries, meters, switches, miscellaneous electrical equipment and other devices required for the installation.

4. Wind systems: The following components shall be eligible:

i. Structural parts, including towers and supporting pads;

ii. Electrical equipment, including alternators, generators, inverters, meters, batteries, controls and circuits;

iii. Mechanical equipment, including gearboxes, heads, transmissions, pumps, and shafts;

iv. Interconnecting devices, including wire and conduits used to connect the wind system to the electric service panel, and equipment required to complete the installation and interconnection of the wind system to the utility.

### 12A:55-2.2 Ineligible equipment

(a) The following shall not be considered eligible for an exemption from sales and use taxes:

1. Building insulation used to reduce heat lost through walls, roofs, slabs, and foundations;

2. Uninsulated skylights;

3. Heat storage devices or delivery systems which are also utilized for other means of heating and/or cooling including back-up systems;

4. Bracing equipment used as building structural members such as columns, beams, and studs;

5. Devices such as draperies, venetian blinds, and curtains which are not part of the solar energy system and do not meet the definition of insulating devices and/or shading devices pursuant to N.J.A.C. 12A:55-1.3;

6. Heat pumps and other refrigerators;

7. Devices used to extract and store heat generated by organic waste piles;

8. Trees, shrubbery, and other forms of vegetation.

12A:55-2.3 Determination by administrator

(a) If a solar energy system is neither specifically eligible nor ineligible for exemption, or if eligibility is in dispute, or in the case of site-built collectors, the Administrator shall examine said system to determine its eligibility.

1. The applicant for an exemption shall submit information required by the Administrator at the time of application pursuant to N.J.A.C. 18:24-26.

2. The Administrator shall issue a ruling as to the system's eligibility within 20 working days of receipt of the request for a determination and shall communicate the ruling to the applicant and to the Department of Treasury, Division of Taxation.

3. Rulings of the Administrator are prospective and shall apply to all future exemption applications for systems of that type.

4. If a determination is not issued within 20 working days of receipt of the request, the system shall be deemed eligible for a full exemption in this case. This will not affect the eligibility of future systems of the same type.

5. The determination of the Administrator shall constitute final agency action concerning the system's eligibility.

SUBCHAPTER 3. SOLAR SYSTEM STANDARDS

12A:55-3.1 Applicability of New Jersey Uniform Construction Code

The manufacturing, sale or installation of solar components and/or systems, solar energy systems constructed or purchased for heating and/or cooling utilizing active and/or passive concepts shall comply with applicable provisions of the New Jersey Uniform Construction Code, N.J.A.C. 5:23.

**LAW AND PUBLIC SAFETY**

**(a)**

**DIVISION OF CONSUMER AFFAIRS**

**Board of Optometrists**

**Notice of Public Hearing**

**Delegation of Duties to Ancillary Personnel**

**Proposed New Rule: N.J.A.C. 13:38-2.11**

**Take notice** that the Board of Optometrists will discuss the proposed new rule N.J.A.C. 13:38-2.11, published in the September 19, 1988 New Jersey Register at 20 N.J.R. 2363(a), at a **public hearing** on Wednesday, February 22, 1989, at 10:00 A.M. in the Bureau of Securities' Hearing Room, 8th Floor, Gateway Two, Newark, New Jersey.

**Interested persons** wishing to provide comment at the public hearing should contact, by February 15, 1989:

Jan C. Gavzy, Executive Director  
Board of Optometrists  
1100 Raymond Boulevard  
Room 501  
Newark, New Jersey 07102  
(201) 648-2012

**TRANSPORTATION**

**(b)**

**NEW JERSEY TRANSIT CORPORATION**

**Examination and Duplication of NJ TRANSIT Records**

**Proposed New Rules: N.J.A.C. 16:82**

Authorized By: New Jersey Transit Corporation, Jerome C.

Premo, Executive Director.

Authority: N.J.S.A. 47:1A-2 and 27:25-20.

Proposal Number: PRN 1989-76.

Submit comments by March 8, 1989 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

The agency proposal follows:

**Summary**

The New Jersey Transit Corporation (NJ TRANSIT) and its subsidiaries are responsible for provision of rail and bus services in the State of New Jersey. NJ TRANSIT must make its public records available, for examination and duplication, to requesting members of the public consistent with N.J.S.A. 47:1A-2 and 27:25-20. NJ TRANSIT therefore proposes new rules, N.J.A.C. 16:82, which shall govern the issuance and sale of NJ TRANSIT public records.

**Social Impact**

The proposed rules regarding the availability of NJ TRANSIT public records for examination and duplication by members of the public uphold the rights of the public under "The New Jersey Right to Know Law" as declared in N.J.S.A. 47:1A-1, and in NJ TRANSIT's enabling legislation, N.J.S.A. 27:25-1 et seq.

**Economic Impact**

The proposed rules establish fees for providing copies of NJ TRANSIT public records in accord with N.J.S.A. 47:1A-2. The fees will defray administrative costs, and NJ TRANSIT does not expect to profit from the collection of such fees. The economic impact on those requesting copies of records will vary on a case-by-case basis.

**Regulatory Flexibility Statement**

These rules do not require a small business regulatory analysis since they do not specifically apply to or impact on small businesses. Any small business impact will be limited to such businesses that may request examination or copying of NJ TRANSIT records. These rules specify that what records may be examined and set forth the minimum cost for copies of such records.

Full text of the proposal follows:

CHAPTER 82

EXAMINATION AND DUPLICATION OF NJ TRANSIT RECORDS

SUBCHAPTER 1. GENERAL PROVISIONS

16:82-1.1 Purpose

The New Jersey Transit Corporation (NJ TRANSIT) and its subsidiaries are responsible for provision of rail and bus services in the State of New Jersey. As a State instrumentality, NJ TRANSIT must make its public records available, for examination and duplication, to requesting members of the public. This chapter governs the issuance and sale of copies of NJ TRANSIT public records.

16:82-1.2 Definitions

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

"Fee" means the assessment of administrative costs plus any applicable costs of record duplication.

"NJ TRANSIT" means the New Jersey Transit Corporation or any of its subsidiaries.

"NJ TRANSIT public records" means "public records" as defined in N.J.S.A. 47:1A-2 and N.J.S.A. 27:25-20, except as excluded in N.J.A.C. 16:82-2.2 maintained by NJ TRANSIT.

SUBCHAPTER 2. REQUIREMENTS

16:82-2.1 Examination of NJ TRANSIT public records

(a) All NJ TRANSIT public records may be examined by members of the public, by appointment, during the regular business hours of the Assistant Executive Director for Labor Relations and Legal Affairs. Every citizen of the State also has the right to purchase copies of these public records. The Assistant Executive Director for Labor Relations and Legal Affairs will determine the appropriate office where the records may be examined or obtained.

(b) The right of examination of public records pursuant to N.J.S.A. 47:1A-3 may be denied in cases where the records being sought for examination pertain to any investigation by NJ TRANSIT

in progress, if the inspection, copying, or publication of these records is not in the best interest of the public.

#### 16:82-2.2 Non-public records

(a) Certain records are not considered "NJ TRANSIT public records", and may be made available for examination and purchase only by an individual who demonstrates to the Assistant Executive Director for Labor Relations and Legal Affairs that the person has a legitimate beneficial interest in such a record or the protection of his or her property rights or the protection of any interest the citizen may have in any matter affecting the citizen to which said record is relevant. Such non-public records include those pertaining to:

1. Future construction projects in terms of specific amounts, locations, or design criteria.
2. Qualifications and classifications of contractors, consultants, and appraisers.
3. Research and tests required in the development of materials, design, and construction.
4. Consultants' draft and final reports, NJ TRANSIT draft and final preliminary planning and engineering studies prior to disclosure at public hearing.
5. Engineering cost estimates.
6. Proprietary information developed by NJ TRANSIT or submitted by vendors and bidders/proposers.
7. Current and prior labor negotiation documents.
8. All negotiation documents pertaining to real estate transactions, procurement, change order, or other contract negotiations.
9. All accident and safety investigation reports.
10. Personnel and pension records, except that the following can be made "public":
  - i. An individual's name, title, position, salary, payroll record, length of service, date of separation from agency, and the amount and type of pension the individual is receiving.
  - ii. Data which disclose conformity with specific experimental, educational or medical qualifications required for agency employment or receipt of a public pension, but under no circumstances will detailed medical or psychological information be released.
11. All records pertaining to Worker's Compensation, Temporary Disability, and Federal Employer Liability Act matters.
12. All records which are part of any workpapers, memoranda, or reports which are made, maintained, or kept by the Office of Internal Audit in NJ TRANSIT, including audits or reports made by outside auditors, but not for the audit or report required by N.J.S.A. 27:25-20(d).
13. Research documents pertaining to ongoing studies for the operational areas of NJ TRANSIT prior to disclosure to the public.
14. All materials, procedures, and related documents regarding the security of employees, the public, and NJ TRANSIT property and funds. This includes, but is not limited to, documents pertaining to the collection and deposit of fare-box revenue.
15. Disadvantaged Business Enterprises and Women's Business Enterprises classification questionnaires submitted as part of Federal and State goal and set-aside programs.

(b) The records listed below are also not considered NJ TRANSIT public records and are subject to the provisions of N.J.S.A. 20:3-12(c) and (d) and the New Jersey Court Rules.

1. Estimates, appraisals and costs of acquiring property prior to the completion of a project.
2. For the preservation of the "attorney-client privilege," all records which are part of any case file maintained by a Deputy Attorney General or Special Counsel representing NJ TRANSIT.

(c) Board items contained in the minutes of closed executive sessions, and all material forming the background for such board items, may be withheld from disclosure until the reason for discussing the item in closed session no longer exists.

(d) Portions of "non-public" records may be made available for examination or copying at the discretion of the Assistant Executive Director for Labor Relations and Legal Affairs where the interests of NJ TRANSIT are not otherwise negatively affected by such disclosure.

#### 16:82-2.3 Administrative fees

(a) The citizen requesting to examine NJ TRANSIT public records shall pay fees established by NJ TRANSIT as set forth in this section.

(b) Costs are as follows:

1. For copies of 8½ inch by 11 inch and 11 inch by 14 inch
  - i. First page to 10th page, \$0.50 per page.
  - ii. Eleventh page to 20th page, \$0.25 per page.
  - iii. All pages over 20, \$0.10 per page.
2. For magnetic tapes, computer-sized paper, maps, charts, etc., costs are vendor's charge, that is, fees charged by an outside firm to make copies.

(c) If the Assistant Executive Director for Labor Relations and Legal Affairs finds that there is no risk of damage, mutilation, or loss of such records, and that it will not be incompatible with the economic and efficient operation of NJ TRANSIT and the transaction of its public business, he or she may permit any citizen who is seeking the copy more than 100 pages of records to use his or her own photographic process, approved by the Assistant Executive Director for Labor Relations and Legal Affairs, upon the payment of a reasonable fee, considering the equipment and the time involved, of not less than \$5.00 or more than \$25.00 per day.

(d) When the Assistant Executive Director for Labor Relations and Legal Affairs makes available records that involve a significant amount of research and investigation, additional charges may be imposed to reimburse NJ TRANSIT for the cost of conducting this research and investigation. Cost will be calculated on a worker/hour basis. These charges will be in addition to the charges in (b) and (c) above.

#### 16:82-2.4 Procedure for copy request or record examination

A private citizen may request a copy of a NJ TRANSIT public record, or make an appointment to examine such a record, by contacting:

Assistant Executive Director  
for Labor Relations and Legal Affairs  
NJ TRANSIT  
P.O. Box 10009  
Newark, NJ 07101  
Telephone (201) 643-7130.

## TREASURY-TAXATION

### (a)

#### DIVISION OF TAXATION

#### Transfer Inheritance and Estate Tax

#### Proposed Amendments: N.J.A.C. 18:26-3.2, 11.1 and 12.11

Authorized By: John R. Baldwin, Director, Division of Taxation.

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

Proposal Number: PRN 1989-74.

Submit comments by March 8, 1989 to:

Nicholas Catalano  
Chief Tax Counselor  
Division of Taxation  
50 Barrack Street  
CN 269  
Trenton, NJ 08646

The agency proposal follows:

#### Summary

The proposed amendment of N.J.A.C. 18:26-11.1 is necessary as a result of the full implementation of the provisions of P.L. 1985, c.57, effective with estates of decedents dying on or after July 1, 1988.

P.L. 1985, c.57 granted full exemption from New Jersey transfer inheritance tax to a surviving spouse, effective in estates of decedents dying on or after January 1, 1985. It further provided for full exemption from the tax to remaining Class "A" transferees, effective with estates of decedents dying on or after July 1, 1988.

In response to the statutory exemption granted to the surviving spouse, the Division of Taxation adopted an amendment to N.J.A.C. 18:26-11.1 which provided for the release of certain assets to a surviving spouse by use of an affidavit of waiver, also known as a "spousal" waiver or "self-executing" waiver.

In general, the "self-executing" waiver permits the prompt transfer of intangible assets to a surviving spouse. The proposed amendment will permit similar transfers to remaining Class "A" transferees, effective with estates of decedents dying on or after July 1, 1988.

The "self-executing" waiver procedure is not applicable for the transfer of real property or tangible personal property or for the release of safe deposit box contents.

This amendment will also correct an erroneous statement in 18:26-11.1(b) which indicates that waivers are not required in estates of nonresident decedents. Waivers in such proceedings are required for real property located in this State.

The proposed amendment to N.J.A.C. 18:26-3.2 is necessary to delete the inclusion of the word "taken" in defining New Jersey estate tax and to provide an example which is based on current Federal estate tax tables. This amendment will conform the rule to the statute.

The proposed amendment deleting N.J.A.C. 18:26-12.11 is necessary to conform with the existing statutory exemption of Division of Taxation inheritance tax cases from formal administrative hearings pursuant to N.J.S.A. 52:14B-2(b).

#### Social Impact

These proposed amendments will serve to inform taxpayers and their representatives of policies and procedures designed and implemented in order to serve them in a more convenient and expeditious manner. The proposed amendments will also clarify the extent to which the "self-executing" waiver may be utilized.

#### Economic Impact

There is minimal economic impact since the amount of tax due and owing the State of New Jersey will not change. There are no statistical measures available by which savings to the State of New Jersey from reduced processing expenses may be determined.

#### Regulatory Flexibility Statement

The proposed amendments relate to New Jersey transfer inheritance tax rules. These taxes do not apply to the conduct of small businesses in the State. The taxes are imposed on the transfer of property from estates of deceased individuals. Thus a regulatory flexibility analysis is not required.

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

#### 18:26-3.2 Amount and nature of tax

(a) The New Jersey estate tax is that amount representing the difference between the gross amount of the inheritance, legacy and succession taxes actually paid this State and any other states, territories, possessions [of], **or** the District of Columbia and the amount of the [allowable] credit [taken] **allowable** against the Federal estate tax due the United States.

#### Example (1):

Mr. "A", a New Jersey resident, died on July 16, [1968] **1988**, having a net taxable estate of [\$300,000] **\$700,000** for Federal estate tax purposes. The credit allowed for state taxes under the Federal estate tax law was [\$20,000] **\$10,000**, the amount actually paid to New Jersey for inheritance taxes was [\$18,000] **\$6,000**. The New Jersey estate tax due is [\$2,000.00] **\$4,000**.

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

#### 18:26-11.1 Consent to transfer; generally

(a) (No change.)

(b) No waivers are required in estates of nonresident decedents, **except for real property located in the State of New Jersey.**

1.-3. (No change.)

(c) (No change.)

(d) **No waivers are required to be issued by the Director in case of certain transfers to the following Class "A" transferees in the estate of New Jersey domiciled decedent who died on or after July 1, 1988:**

**a father, mother, grandparent, grandchild, a child or children of a decedent, including any stepchild of a decedent or child or children adopted by a decedent or the issue of any child or legally adopted child of a decedent. In order to satisfy a corporation (its transfer agent) including any banking institution, trust company organized under the laws of New Jersey, national bank operating in this State, building and loan or savings and loan association in New Jersey, or credit union chartered by the United States operating in this State that intangible assets may be released to the Class "A" transferee, an affidavit of waiver can be executed by the Class "A" transferee or the personal representative of the decedent's estate.**

**1. Letters testamentary or of administration must be attached and made a part of the affidavit when executed by an executor or administrator; or in any case where intangible assets are transferred to the Class "A" transferee under a will or the law of intestate distribution. If two or more executors or administrators qualify, the affidavit may be executed by one of them.**

**2. The Class "A" transferee can execute an affidavit in all cases where under the terms of the account or instrument and applicable State law the Class "A" transferee has the right of survivorship or is the named beneficiary. Letters testamentary or of administration are not required to be attached as part of the affidavit when executed by the Class "A" transferee, except as provided in (d)3 below.**

**3. Where the Class "A" transferee has qualified as executor or administrator of the decedent's estate, intangible assets which pass to the Class "A" transferee under a will or law of intestate distribution can be released by the affidavit together with assets described in (d)2 above, provided that the Class "A" transferee's letters testamentary or of administration are attached and made a part of the affidavit as provided in (d)1 above. Where the Class "A" transferee has not qualified as an executor or administrator of the decedent's estate, only intangible assets may be released by the affidavit in accordance with (d)2 above.**

**4. A separate affidavit is required for each institution, organization or corporation releasing assets to a Class "A" transferee.**

**5. The affidavit or waiver by the Class "A" transferee can not be used for real property and tangible personal property transfers from a decedent to a Class "A" transferee.**

[(d)](e) (No change in text.)

#### 18:26-12.11 [Formal hearing] (Reserved)

(a) All evidence at a formal hearing shall be taken before a court reporter and the parties shall not be bound by common law or statutory rules of evidence; all testimony having reasonable probative value shall be admitted, but immaterial, irrelevant or unduly cumulative testimony may be excluded. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full true disclosure of the facts.

(b) After all parties have been given the opportunity of presenting all the evidence in support of the issues, the Bureau shall take the matter under advisement and reach a determination on the record and facts disclosed. Upon reaching a determination the Bureau shall notify a taxpayer or other party in interest or his representative by mail of the determination made.

(c) After a conference or hearing and either before or after a determination is made, either the Bureau, if it is deemed that there is not sufficient information, or a taxpayer or other party in interest if there is additional information which was not disclosed or presented at the hearing, may request a second hearing or conference to ascertain or present any additional matter relevant to the issue.]

**OTHER AGENCIES**

**(a)**

**NEW JERSEY HIGHWAY AUTHORITY  
Notice of Extension of Comment Period  
Garden State Parkway  
Tolls**

**Proposed Amendments: N.J.A.C. 19:8-1.1 and 3.1**

**Take notice** that the public comment period for the proposed amendments to N.J.A.C. 19:8-1.1 and 3.1 published in the January 17, 1989 New Jersey Register at 21 N.J.R. 127(a) has been extended to February 25, 1989.

Submit comments by February 25, 1989 to:  
George P. Zilocchi, Executive Director  
New Jersey Highway Authority  
Garden State Parkway  
Woodbridge, New Jersey 07095

# RULE ADOPTIONS

## COMMUNITY AFFAIRS

(a)

### DIVISION OF HOUSING AND DEVELOPMENT

#### Uniform Construction Code Plumbing Subcode

#### Adopted Amendment: N.J.A.C. 5:23-3.15

Proposed: November 21, 1988 at 20 N.J.R. 2846(a).  
Adopted: December 30, 1988 by Anthony M. Villane, Jr., D.D.S.,  
Commissioner, Department of Community Affairs.  
Filed: January 5, 1989 as R.1989 d.66, **without change**.  
Authority: N.J.S.A. 52:27D-124.  
Effective Date: February 6, 1989.  
Expiration Date: March 1, 1993.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text of the adoption follows.**

5:23-3.15 Plumbing subcode

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

(c) The 1988 Supplement to the 1987 National Standard Plumbing Code is adopted with the following amendments:

1. Chapter 15, entitled "Tests and Maintenance", Section 15.3.1, "Testing of Plumbing Systems—General" is amended to delete "only when required by the Administrative Authority"; adding "in accordance with N.J.A.C. 5:23-2.20 and 5:23-3.3(a)3".

2. Chapter 16 of the plumbing subcode, entitled "Regulations Governing Individual Sewage Disposal Systems for Homes and Other Establishments Where Public Sewage Systems Are Not Available" and comprising sections 16.1 through 16.12 is deleted in its entirety with the exception of section 16.1.7 to remain as it is.

Note: Existing standards of the Department of Environmental Protection and boards of health with respect to individual on-site sewage disposal systems remain in effect.

3. Chapter 17 of the plumbing subcode, entitled "Potable Water Supply System Pumps" and comprising sections 17.1 through 17.15.2 is deleted in its entirety.

Note: Existing standards of the Department of Environmental Protection and boards of health with respect to individual on-site water supply systems remains in effect.

4. Chapter 18 of the plumbing subcode, entitled "Mobile Home and Trailer Park Plumbing Standards", is amended as follows:

i. Whenever the term "trailer", "trailer coach", "trailer park", and so forth, is used in this subcode, it shall have the same meaning as "mobile home", "mobile home park", and so forth, as used in the building subcode.

ii. Section 18.2.1 is amended to delete the last sentence beginning "Trailer home park".

iii. Section 18.2.2 is amended to delete the words "or sewerage disposal" on line 1.

iv. Section 18.2.2.3 is deleted.

v. Section 18.2.2.4 is amended to delete the last phrase, beginning "and shall, in addition, conform to all other pertinent local ordinances and State regulations".

vi. Section 18.5.8 is amended to add the phrase "and as provided by the authority having jurisdiction" after the words "chapter 10".

vii. Section 18.8.1.2 is deleted.

viii. Section 18.8.3 is amended to add the phrase "for dependent trailers" after the word "park" on line 1.

ix. Section 18.8.4 is amended to add the phrase "for dependent trailers" after the word "park" on line 1.

## EDUCATION

### STATE BOARD OF EDUCATION

(b)

#### Appeals

#### Adopted Repeal: N.J.A.C. 6:2-1

#### Adopted New Rules: N.J.A.C. 6:2-1, 2, and 3

Proposed: November 7, 1988 at 20 N.J.R. 2615(a).  
Adopted: January 4, 1989 by Saul Cooperman, Commissioner,  
Department of Education; Secretary, State Board of  
Education.  
Filed: January 6, 1989, as R.1989 d.67, **with a technical change**  
not requiring additional public notice and comment (see  
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:4-1 through 18A:4-20, 18A:6-27 through  
18A:6-29, 18A:6-39 and 18A:7A-15.

Effective Date: February 6, 1989.

Expiration Date: February 6, 1994.

#### Summary of Public Comments and Agency Responses:

Two speakers from the same organization spoke and made the same comments at the State Board's monthly testimony opportunities on September 22 and October 19, 1988.

COMMENT: A requirement should be made to enable the Commissioner to enforce his own orders.

RESPONSE: This question is outside the scope of the rules.

COMMENT: Commissioner's decisions as to stays should be final and not appealable to the State Board.

RESPONSE: This would be contrary to statutory grant of jurisdiction to the State Board and would deprive the State Board of decision-making authority where the State Board has jurisdiction over the underlying appeal.

COMMENT: A motion to stay should be filed with the Commissioner within 30 days of the filing date of the Commissioner's decision.

RESPONSE: This would deprive the State Board of flexibility to respond to circumstances of individual cases. As a practical matter, it would extend time frame within which the State Board would be able to decide applications.

The Department has made a technical change at N.J.A.C. 6:2-1.6(a), correcting the State Board's address.

**Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*):**

### CHAPTER 2 APPEALS

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 6:2-1.1 Appealable decisions

(a) Final decisions of the Commissioner of the Department of Education and State Board of Examiners are appealable to the State Board of Education. Final decisions include the following:

1. Any determination of the Commissioner, including, as to those separable issues upon which the Commissioner has rendered a final decision, a decision remanding all or part of a controverted case; and

2. Any decision of the State Board of Examiners pertaining to the revocation or suspension of a certificate issued by the Board of Examiners.

(b) The State Board, upon application made pursuant to N.J.A.C. 6:2-2.3, may grant leave to appeal from an interlocutory order, decision or action of the Commissioner, or his or her representative, or of the Board of Examiners.

## ADOPTIONS

### 6:2-1.2 Who may appeal

(a) Any party aggrieved by a decision of the Commissioner or a decision by the Board of Examiners to revoke or suspend certification may appeal to the State Board of Education.

(b) Parties jointly interested in a decision or action may join in an appeal therefrom or may appeal separately.

(c) A respondent may cross appeal as provided by N.J.A.C. 6:2-1.3(b).

### 6:2-1.3 Time for appeal

(a) Appeals from final decisions of the Commissioner or Board of Examiners shall be taken within 30 days of the filing date of the decision from which appeal is taken.

(b) Cross appeals may be taken by filing notice of cross appeal within 10 days of service of notice of appeal.

(c) Applications for leave to appeal from interlocutory orders, decisions or actions shall be made within the time provided by N.J.A.C. 6:2-2.3.

### 6:2-1.4 Computation of time

(a) A decision of the Commissioner or State Board of Examiners shall be deemed filed three days after the date of mailing to the parties.

(b) In computing any period of time fixed by this chapter, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.

### 6:2-1.5 Extensions of time

(a) No extension of time may be granted to enlarge the time specified for appeal or for cross appeal.

(b) By notice to the Legal Committee of the State Board of Education, extensions with consent of all parties for filing briefs or exceptions to the report of the Legal Committee may be obtained for a period of time not to exceed an accumulated total of 30 days for all extensions in one case.

(c) Requests for extensions of time without the consent of all parties may be granted only by leave of the Legal Committee for a period not to exceed 10 days for any party in one case. The Legal Committee may grant further extensions without the consent of all parties only upon a showing of good cause and the absence of prejudice.

(d) Extensions of time that are opposed, or a combination of opposed and unopposed, may not exceed an accumulated total of 30 days for all extensions in one case. Further extensions of time may be granted only by leave of the Legal Committee upon a showing of good cause.

### 6:2-1.6 How to appeal

(a) An appeal or cross appeal shall be taken by serving a copy of the notice of appeal or cross appeal upon all other parties and by filing the original with the Legal Committee of the State Board of Education at 225 West State Street, \*CN 500,\* Trenton, New Jersey 08625, and a copy with the Commissioner of the Department of Education.

(b) An appeal or cross appeal shall be considered filed upon receipt of notice of appeal by the Legal Committee if hand delivered or upon mailing if appended thereto is a proof of mailing including either:

1. An affidavit of the person mailing the appeal; or
2. A certificate of mailing signed by the attorney for the party filing the appeal.

(c) Where there is no accompanying affidavit or certificate of mailing, the appeal shall be deemed to have been mailed three days before receipt of the appeal by the State Board.

### 6:2-1.7 Contents of notice of appeal and notice of cross appeal

(a) A notice of appeal or notice of cross appeal shall set forth the name of the party taking the appeal and his or her address or that of his or her attorney if he or she is represented, the names of all other parties, and shall specifically designate the decision appealed from, or such part as appealed from.

(b) Proof of service shall be appended to notice of appeal or cross appeal in the form of one of the following:

1. An acknowledgement of service signed by the attorney for the party or signed and acknowledged by the party;
2. An affidavit of the person making service; or
3. A certificate of service appended to the paper to be filed and signed by the attorney for the party making service.

(c) Failure to append proof of service to notice of appeal or cross appeal does not affect the validity of service, and the State Board at any time may allow proof of service to be amended or supplied unless an injustice would result.

### 6:2-1.8 Record on appeal

(a) The record on appeal shall consist of all papers on file with the Commissioner or Board of Examiners, with all entries as to matters made on the record, any stenographic transcript, and all papers filed with or entries made on the records of the State Board.

(b) Upon notice of appeal, the Commissioner or Board of Examiners shall certify the record and remit the record to the State Board, together with the notice and two copies of the decision appealed from.

(c) The record shall be retained by the State Board except that any party may be permitted to use any portion of such record in the State Board's appeals office.

### 6:2-1.9 Supplementation of the record

At any time during the pendency of the appeal, if it appears that evidence unadduced at the proceedings below may be material to the issues on appeal, the State Board may direct, on its own motion or on motion of a party, on such terms as it deems appropriate, that the record on appeal be supplemented by the taking of additional evidence.

### 6:2-1.10 Filing and service of briefs, motions, applications, and exceptions

(a) One copy of all briefs, motions, applications, and exceptions filed pursuant to this chapter shall be served on all parties, and proof of such service in conformity with N.J.A.C. 6:2-1.7(b) shall be appended to an original, which shall be filed with the Legal Committee.

(b) In addition to an original, 17 copies of all briefs, motions, applications, and exceptions shall be filed with the Legal Committee.

(c) All briefs filed pursuant to this chapter shall be deemed filed upon receipt by the Legal Committee.

### 6:2-1.11 Time for serving and filing briefs

(a) Except as otherwise provided by N.J.A.C. 6:2-2.3, Motion for leave to appeal, the appellant shall serve and file a brief in support of the appeal within 20 days after the appeal has been filed. The respondent shall serve and file an answer brief within 20 days after service of the appellant's brief. The appellant may serve and file a reply brief within 10 days after service of the respondent's brief. No other briefs shall be served or filed without leave of the Legal Committee.

(b) If a cross appeal is taken, the party first appealing shall serve and file an appeal brief within 30 days of notice of the cross appeal. Within 30 days thereafter, the cross-appellant shall serve and file a brief in support of the cross appeal, which shall include an answer to appellant's brief. The appellant may file a reply brief within 10 days thereafter. No other briefs shall be served or filed without leave of the Legal Committee.

### 6:2-1.12 Failure to meet filing deadlines

(a) Failure to meet the filing deadline for an appeal brief or brief in support of a cross appeal may be viewed as a failure to perfect the appeal or cross appeal. Accordingly, on its own motion, the State Board may move to dismiss such appeal or cross appeal.

(b) If a respondent fails to meet the filing deadline for an answer brief, the record may be closed and the State Board may consider the matter on the record then before it.

## EDUCATION

6:2-1.13 Contents of briefs

(a) The cover of each formal brief filed pursuant to this chapter shall contain the following matter:

1. The name of the State Board of Education and State Board of Education docket number of the action;
2. The title of the action;
3. The designation of the parties before the Commissioner and the designation of the parties in the action before the State Board;
4. The title of the document and the designation of the party for whom it is filed; and
5. The name and office address of the attorney of record and the names of any attorneys "of counsel" or "on the brief".

(b) All briefs shall be typed and plainly legible. All formal briefs shall be typed double spaced.

(c) Each formal brief filed by an appellant shall contain the following material under distinct titles, arranged in the following order:

1. A table of contents, including the point headings to be argued. Any point neither briefed nor argued in the proceedings prior to the appeal to the State Board shall be so indicated by including a statement in parentheses to that effect in the point heading.
2. If the appeal raises questions concerning educational policies, a concise and specific statement of those policies.
3. A concise procedural history including a statement of the nature of the proceedings and a reference to the order, decision or action appealed from or sought to be reviewed.
4. A concise statement of the facts material to the issues on appeal supported by references to the record and transcript. The statement shall be in the form of a chronological narrative summarizing all pertinent evidence, but shall not be a summary of all the evidence adduced at hearing, witness by witness.
5. The legal argument for the appellant, under appropriate point headings, distinctively printed or typed, into as many parts as there are to be argued.

(d) In lieu of filing a formal brief in accordance with (c) above, the appellant may file a letter brief. Letter briefs may be typed either single or double-spaced, but shall not exceed 15 pages. Letter briefs shall conform with the requirements of (c)2, 3, 4, and 5 above. Any point neither briefed nor argued in the proceedings prior to the appeal to the State Board shall include a statement to that effect in parentheses in the point heading. No cover need be annexed, provided that the information required is included in the heading of the letter.

(e) Respondent's answer brief shall conform to the requirements of (c) or (d) above, but shall include a counter-statement of facts only if respondent disagrees with such statement in appellant's brief.

(f) A brief in support of a cross appeal shall conform to the requirements of (c) or (d) above.

(g) Appellant's reply brief shall conform to the requirements of (c) or (d) above.

6:2-1.14 Appendices

(a) An appeal brief or brief in support of a cross appeal shall have appended thereto an appendix containing such parts of the record, including evidentiary exhibits or portions thereof, upon which the appellant or cross-appellant relies, or upon which it should reasonably be assumed the respondent will rely in meeting the issues raised.

(b) An appendix shall not include any document that would supplement the evidentiary record made before the Commissioner unless motion to supplement the record has been made and granted by the State Board as provided by N.J.A.C. 6:2-1.9.

6:2-1.15 Length of briefs

(a) Initial briefs of parties, if formal briefs, shall not exceed 40 pages exclusive of tables of contents and appendices. Letter briefs and reply briefs shall not exceed 15 pages.

(b) These page limits may be relaxed only by leave of the Legal Committee, which may be applied for ex parte.

6:2-1.16 Inadequacy or impropriety of briefs

(a) If a brief does not substantially conform to this subchapter or is so inadequate that justice cannot be done without the State Board's independent review of the record or research of the law, the State

Board may order the same suppressed and direct the filing within a fixed period of time of a new brief.

(b) The Legal Committee may, on its own or motion by a party, strike any part of a brief that is profane or abusive of the State Board or another person.

6:2-1.17 Exceptions to reports of the Legal Committee

(a) Whenever there is a written report of the Legal Committee as provided by N.J.A.C. 6:2-3.1(d), the parties may serve and file exceptions within 10 days of the date on which the report is filed. Exceptions shall be filed concurrently and shall not exceed 10 pages. No other papers shall be served or filed without leave of the Legal Committee.

(b) Written reports of the Legal Committee shall be deemed filed three days after the date of mailing to the parties.

6:2-1.18 Motions

(a) Every motion shall be accompanied by a brief, conforming to the requirements of either N.J.A.C. 6:2-1.13(c) or (d). The brief shall explain clearly the nature of the action, the relief sought by the moving party and why the movant is entitled thereto.

(b) Every brief shall have appended to it any decision or order of the Commissioner or State Board of Examiners granting or denying the relief sought or challenged, and such portions of the record upon which the movant either relies or should reasonably assume the opposing party will rely.

(c) Each motion shall be accompanied by an affidavit setting forth fully the factual basis upon which the motion is founded.

(d) The moving party shall serve one copy of the moving papers on all other parties, and file with the Legal Committee an original and 17 copies thereof.

(e) Except as provided by N.J.A.C. 6:2-2.4, Emergency relief, an opposing party shall have 10 days after service of the movant's papers to serve and file the same number of papers in opposition. The opposing party's brief shall explain clearly the grounds for opposition, annexing any papers relied on that were not included in the moving party's appendix. If no opposing brief is filed, the State Board may consider the motion unopposed.

(f) Without leave of the Legal Committee, which may be applied for ex parte, supporting and answering briefs shall not exceed 15 pages, exclusive of table of contents and appendix.

(g) No other papers shall be filed by either party without leave of the Legal Committee.

(h) Unless otherwise directed by the State Board, there shall be no oral argument on motions.

6:2-1.19 Relaxation of the rules

The rules of this chapter shall be construed to secure a just determination, simplicity of procedure, fairness in administration and elimination of unnecessary delay. Unless otherwise stated, any rule may be relaxed in any case by the State Board, in its discretion, if adherence to such rule would result in an injustice.

SUBCHAPTER 2. MISCELLANEOUS PROCEEDINGS

6:2-2.1 Motion to appear as amicus curiae

(a) A motion for leave to appear as amicus curiae shall state with specificity the identity of the applicant, the issue intended to be addressed, the nature of the public interest therein and the nature of the applicant's special interest, involvement or expertise with respect thereof.

(b) The State Board shall grant the motion if it is satisfied under all the circumstances that the motion is timely, that the applicant's participation will assist in the resolution of an issue of public importance, and that no party to the litigation will be unduly prejudiced thereby. The order granting the motion shall fix a briefing schedule.

(c) An amicus curiae who has been granted leave to appear in a case before the Commissioner may, without seeking further leave, file a brief and appear in an appeal taken to the State Board from the decision or order entered therein.

## ADOPTIONS

### 6:2-2.2 Motion for stay of a decision of the Commissioner or State Board of Examiners

(a) After the filing of a notice of appeal to the State Board from a determination of the Commissioner or Board of Examiners, a motion for stay shall be made first to the Commissioner or Board of Examiners.

(b) A motion for stay to the Commissioner or Board of Examiners shall be done by notice of motion with supporting affidavit, two copies of which shall be filed with the Commissioner or Board of Examiners and one copy served on each party to the action.

(c) The motion and affidavit shall set forth fully that portion of the Commissioner's or Board of Examiner's decision with respect to which a stay is sought, the factual basis on which the motion for stay is founded, and the reasons favoring the stay.

(d) Any party opposing the motion for stay shall file and serve within 10 days of service of such application an answering affidavit in the same manner, setting forth the reasons why the motion for stay should be denied.

(e) If the motion is denied by the Commissioner or Board of Examiners, motion for stay may be made to the State Board. If the motion is granted before the Commissioner, a motion to dissolve the stay may be made to the State Board.

### 6:2-2.3 Motion for leave to appeal an interlocutory order, decision or action

Motion for leave to appeal an interlocutory order, decision or action shall be made by filing a motion for leave to appeal to the State Board of Education within five days after the action or service of the interlocutory decision or order. Motion for leave to appeal shall conform to the requirements of N.J.A.C. 6:2-1.18, except that the brief in support of the motion shall also include the merits of the issues sought to be appealed. The respondent's answer shall be filed within 10 days of service of motion.

### 6:2-2.4 Emergency relief

(a) Where the Commissioner has granted or denied emergency relief pursuant to N.J.A.C. 1:1-12.6, a party may move for emergency relief before the State Board.

(b) Applications for emergency relief shall conform to the requirements of N.J.A.C. 6:2-1.18. Opposing parties shall be given opportunity under the circumstances to file papers in response to an application for emergency relief.

(c) Applications for emergency relief shall be considered on an expedited basis.

### 6:2-2.5 Appeal from a decision of the Commissioner on school budget cap waiver applications

(a) An appeal to the State Board of Education from a decision of the Commissioner made pursuant to N.J.S.A. 18A:7A-25 shall be taken within seven days of the filing of the Commissioner's decision. The appeal shall be taken by filing with the Commissioner and the Legal Committee of the State Board a notice identifying the decision and stating that an appeal is being taken to the State Board from it or such part of it as may be specified.

(b) The Commissioner shall certify the record of the cap waiver determination to the State Board within three days after the filing of the notice of appeal, and shall remit the record, so certified, together with the notice of appeal and two copies of the Commissioner's decision, to the Legal Committee of the State Board.

(c) Within three days of the filing of the notice of appeal, the appellant may submit to the Legal Committee of the State Board an original and 17 copies of the arguments upon which the appellant will rely. The arguments may be presented in letter form and shall state the reasons that a thorough and efficient system of education cannot be provided without each of the line items from which the appeal is taken. If no arguments are submitted within the three day period, the State Board will determine the appeal solely on the basis of the record certified to it by the Commissioner.

### 6:2-2.6 Issuance of an administrative order creating a State-operated school district

(a) A recommendation made to the State Board by the Commissioner for the issuance of an administrative order creating a State-operated school district shall be deemed filed three days after the date of mailing to the respondent.

(b) The Commissioner shall certify the record upon which the recommendation is based and remit the record, so certified, together with two copies of the recommendation to the State Board within three days after the recommendation is filed.

(c) Within 10 days after the recommendation is filed, a respondent contesting the recommendation shall file a notice of intention to contest with the State Board of Education and with the Commissioner, identifying the recommendation and stating that the respondent intends to contest it. A notice filed on behalf of a district board of education shall have appended thereto a certification that the district board has authorized the filing of the notice by resolution of the district board adopted by roll call vote.

(d) Within 15 days after the filing of notice, the respondent shall file with the State Board an original and 17 copies of its exceptions to the recommendation, and shall serve one copy upon the Commissioner.

1. The exceptions shall specify the basis upon which the respondent contests the recommendation and shall include the respondent's argument, clearly and concisely stated, as to why the State Board should not issue an administrative order creating a State-operated school district.

2. Any transcript or exhibit admitted into evidence, or portion thereof, relied upon shall be specifically identified.

3. The respondent's exceptions may be in letter form, but shall not exceed 30 pages unless leave of the State Board has been obtained.

(e) Within 10 days after the respondent has filed its exceptions, the Commissioner may file a response not exceeding 30 pages, which shall specifically identify any transcript or exhibit admitted into evidence, or portion thereof, upon which the Commissioner relies in the response.

(f) No other papers shall be served or filed without leave of the State Board.

(g) Oral argument before the State Board, or a committee thereof, may be granted on request of the respondent made by a separate captioned paper filed concurrently with its exceptions, or, in the case of any recommendation, upon direction of the State Board.

(h) If no notice is filed as provided by (c) above, or exceptions are not filed within the 15 day period provided by (d) above, the decision of the State Board will be based solely on the record certified to it by the Commissioner.

(i) Except as otherwise provided, the rules included in this chapter are applicable to proceedings pursuant to this section.

(j) Determinations of the State Board made pursuant to this section shall be embodied in a written decision, which shall be certified to the Commissioner and simultaneously mailed to the respondent or its attorney of record.

(k) The decision of the State Board shall be deemed filed three days after the date of mailing.

### 6:2-2.7 Motions for clarification of a State Board decision

A motion for clarification shall be served and filed within 10 days after the State Board has filed its decision in the matter.

## SUBCHAPTER 3. REVIEW AND DECISION

### 6:2-3.1 Functions of the Legal Committee

(a) The Legal Committee shall supervise the preparation of and make available to the State Board the entire record, and shall transmit to each member of the Board the basic documents in the case file, which shall include, but not be limited to:

1. The decision of the Commissioner or Board of Examiners;
2. Appellant's brief, further memoranda and briefs; and
3. Respondent's answering brief, further memoranda and briefs.

(b) Except as otherwise provided, the Legal Committee shall have the authority to accelerate the time schedule established by this chapter, or to stay such time schedule on its own or motion of a

party, as it deems necessary to insure that the proceedings are expeditious and that the interests of the parties are protected.

(c) After reviewing a given appeal, the Legal Committee shall report to the State Board at public meeting of the Board, recommending its conclusions.

(d) Prior to the consideration of a given appeal by the State Board, the Legal Committee may submit to the members of the State Board a written report setting forth its recommendations.

1. Whenever there is such a written report of the Legal Committee, it shall be mailed simultaneously to all parties or their attorneys of record, and opportunity for exceptions shall be provided pursuant to N.J.A.C. 6:2-1.17.

2. Each report, along with any exceptions, then shall be transmitted to each member of the State Board in advance of consideration of the matter by the Board.

6:2-3.2 Oral argument

(a) Appeals to the State Board shall be considered without oral argument unless argument is directed by the Legal Committee or the State Board.

(b) Oral argument before the Legal Committee or before the State Board will be granted at the discretion of the Committee or the State Board only if the respective body is convinced that this procedure is necessary for a fair determination of the case.

(c) A party requesting oral argument shall make the request by filing a separate captioned paper within 10 days after service of the respondent's brief concisely presenting the reasons why oral argument is necessary.

(d) Even when reasons are proffered by a party, the Legal Committee and/or the State Board may deny a request for oral argument when not convinced that this procedure is necessary to make a fair determination of the case.

6:2-3.3 Authority to decide applications for emergency relief

The President of the State Board or, in the President's absence, the chairperson of the Legal Committee is authorized to decide on behalf of the State Board applications for emergency relief made pursuant to N.J.A.C. 6:2-2.4 unless the determination would constitute the final decision with respect to the controversy.

6:2-3.4 Decision of the State Board

(a) The State Board shall make final determinations with respect to each controversy by resolution at open public meeting.

(b) Each final determination of the State Board shall be embodied in a written decision, which shall be mailed to all parties or their attorneys of record.

(c) Decisions of the State Board shall be deemed filed three days after the date of mailing to the parties.

**(a)**

**Bookkeeping and Accounting in Local School Districts**

**Adopted Amendments: N.J.A.C. 6:20-2.5, 2.6 and 2.8 through 2.14.**

**Adopted Repeals and New Rules: N.J.A.C. 6:20-2.1, 2.2 and 2.3.**

**Adopted Repeals: N.J.A.C. 6:20-2.4 and 2.7.**

Proposed: October 17, 1988 at 20 N.J.R. 2502(a).

Adopted: January 4, 1989 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: January 13, 1989 as R.1989 d.86, with a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:4-14, 18A:4-15, 18A:7A-19, 18A:7A-26, 18A:18A-4, 18A:18A-5, 18A:19-13, 18A:22-8, 18A:29-3, 18A:33-3 and 52:14-15.9(e).

Effective Date: February 6, 1989.

Expiration Date: August 9, 1990.

**Summary of Public Comments and Agency Responses:**

**COMMENT:** That Handbook 2R2 be the only account classification system was recommended by the New Jersey Association of School Business Officials, the Gloucester County Association of School Business Officials, Salem County School Business Officials, Camden County School Business Officials, the Association of School Business Officials of Atlantic, Cape May, Cumberland and Salem Counties, and the Logan Township Board of Education.

**RESPONSE:** Handbook 2R2 is a more sophisticated account classification system than line item, and it is required for Federal reporting. However, line item classification is entered as an option because many districts are opposed to Handbook 2R2.

At the minimum level of detail, the number of accounts involved in a Handbook 2R2 budget would be comparable to the proposed line item system which had to be modified to meet GAAP and recent statutory reporting requirements. The Commissioner is monitoring the situation and perhaps will recommend an amendment to the rules in the future.

**COMMENT:** The Gloucester County Association of School Business Officials recommended that comprehensive training concerning Handbook 2R2 be provided.

**RESPONSE:** The Department is planning to offer three day workshops conducted by State employees. The workshops will be utilized to present the technical manual and answer questions. Forty workshops will be provided over a two year period. Current staffing levels and available resources limit the Department's training capabilities.

**COMMENT:** The Logan Township Board of Education recommended that the Commissioner prepare a computer program based on Handbook 2R2 for personal computers for purchase by local boards of education.

**RESPONSE:** The cost involved in developing, supporting and maintaining a computer program based on Handbook 2R2 for personal computers would be prohibitive. It would be impossible to determine the market and product cost for such an endeavor.

**COMMENT:** The Bay Head Board of Education opposes double entry bookkeeping on the basis of the unnecessary expense and confusion.

**RESPONSE:** Double entry bookkeeping was mandated by statute, not the rules.

Due to an error in publication, the word "amount" preceding "appropriated" in N.J.A.C. 6:20-2.11(a) was inadvertently omitted. The word currently exists at that cite in the New Jersey Administrative Code and is being corrected by re-insertion upon adoption.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*).

6:20-2.1 Prescribed system of bookkeeping and accounting

(a) A uniform system of double entry bookkeeping shall be established, and such uniform system shall be utilized by all district boards of education.

(b) Accounting principles consistent with the "generally accepted accounting principles" (henceforth referred to as GAAP) promulgated by the Governmental Accounting Standards Board shall be applied by all district boards of education when preparing financial statements.

6:20-2.2 Summary statement of principles

(a) The accounting and reporting objectives of a district board of education accounting system shall make it possible to:

1. Present fairly and with full disclosure the financial position and results of operations of the funds and the presentation of account groups of the district board of education in conformity with GAAP; and

2. Determine and demonstrate compliance with finance-related legal and contractual provisions.

(b) District board of education accounting systems shall be organized and operated on a fund basis. A fund is defined as a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with the fund's special regulations, restrictions, or limitations.

(c) The following types of funds shall be used by district boards of education:

## ADOPTIONS

1. Governmental funds shall be established, when necessary as follows:

i. The general fund is used to account for all financial resources except those required to be accounted for in another fund. The general fund shall include, as necessary, major accounts (funds) as follows: general current expense; capital outlay; and other current expense categories designated by the Commissioner.

ii. Special revenue funds are used to account for the proceeds of specific revenue sources (other than expendable trusts or for major capital projects) that are legally restricted to expenditure for specified purposes.

iii. Capital projects funds are used to account for financial resources to be used for the acquisition or construction of major capital facilities (other than those financed by general fund revenues such as property taxes, proprietary funds and trust funds).

iv. Debt service funds are used to account for the accumulation of resources for, and the payment of, general long-term debt principal and interest.

2. Proprietary funds shall be established, when necessary, as follows:

i. Enterprise funds are used to account for operations that are financed and operated in a manner similar to private business enterprises, where the intent of the district board of education is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges; or where the district board of education has decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes.

ii. Internal service funds are used to account for the financing of goods or services provided by one department or office to other departments or offices of the district board of education, or to other district boards of education and governmental units, on a cost-reimbursement basis.

3. Fiduciary funds shall be established, when necessary, as follows:

i. Trust and agency funds are used to account for assets held by a district board of education in a trustee capacity or as an agent for individuals, private organizations, other governmental units, and/or other funds. These include expendable trust funds, nonexpendable trust funds, pension trust funds, and agency funds.

(d) District boards of education shall establish and maintain those funds required by law and sound financial administration. Only the minimum number of funds consistent with legal and operating requirements should be established.

(e) District boards of education shall maintain account groups for fixed assets and long-term liabilities.

1. A clear distinction shall be made between fund fiscal assets and general fixed assets.

i. Fixed assets related to specific proprietary funds or trust funds shall be accounted for through such funds.

ii. All other fixed assets of a district board of education not required to be accounted for in a proprietary or trust fund shall be accounted for through the general fixed assets account group.

2. A clear distinction shall be made between fund long-term liabilities and general long-term debt.

i. Long-term liabilities of proprietary funds and trust funds shall be accounted for through such funds.

ii. All other unmatured general long-term liabilities of the district board of education not required to be accounted for in a proprietary or trust fund shall be accounted for through the general long-term debt account group.

(f) Fixed assets shall be accounted for at cost or, if the cost is not practicably determinable, at estimated historical cost determined in accordance with GAAP. Donated fixed assets shall be recorded at their estimated fair value at the time received.

(g) The following shall apply to the depreciation of fixed assets:

1. Depreciation of general fixed assets accounted for through the general fixed assets account group shall not be recorded in the accounts of governmental funds. Depreciation of general fixed assets

## EDUCATION

may be recorded in cost accounting systems or calculated for cost finding analyses, and accumulated depreciation may be recorded in the general fixed assets account group.

2. Depreciation of fixed assets accounted for in a proprietary fund shall be recorded in the accounts of such fund. Depreciation is also recognized in trust funds where expenses, net income, and/or capital maintenance are measured.

(h) The modified accrual or accrual basis of accounting as appropriate shall be used in measuring financial position and operating results.

1. Governmental fund revenues and expenditures shall be recognized on the modified accrual basis. Revenues shall be recognized in the accounting period in which they become available and measurable. Expenditures shall be recognized in the accounting period in which the fund liability is incurred, if measurable, except for unmatured interest on general long-term debt, which shall be recognized when due.

2. Proprietary fund revenues and expenses shall be recognized on the accrual basis. Revenues shall be recognized in the accounting period in which they are earned and become measurable; expenses shall be recognized in the period incurred, if measurable.

3. Fiduciary fund revenues and expenses or expenditures (as appropriate) shall be recognized on the basis consistent with the fund's accounting measurement objective. Nonexpendable trust and pension trust funds shall be accounted for on the accrual basis; expendable trust funds shall be accounted for on the modified accrual basis. Agency fund assets and liabilities shall be accounted for on the modified accrual basis.

4. Transfers shall be recognized in the accounting period in which the inter-fund receivable and payable arise.

(i) An annual budget(s) shall be adopted by each district board of education and shall be included in the minutes of the board.

1. A detailed school district budget statement which shall include the classification of expenditures by program and/or function shall be prepared on a fund basis and in accordance with N.J.S.A. 18A:22-8. The school district budget statement shall be submitted by each district board of education in a form prescribed by the Commissioner.

2. Detailed budgets for each special project, capital project and Federal or State grant shall be prepared and maintained along with all authorized revisions on file in the business office.

3. A district board of education shall take appropriate action, as necessary, to maintain a "balanced budget", that is, one in which budgeted anticipated revenues equal budgeted appropriations.

i. The board secretary shall notify the district board of education of any changes in anticipated revenue sources.

(j) The accounting system shall provide the basis for appropriate budgetary control.

(k) Budgetary comparisons shall be included in the appropriate financial statements and schedules for governmental funds for which an annual school district budget has been adopted.

(l) Transfer, revenue, expenditure, and expense account classification shall be maintained as follows:

1. Interfund transfers and proceeds of general long-term debt issues shall be classified separately from fund revenues and expenditures or expenses.

2. Governmental fund revenues shall be classified by fund, character (major account) and source. Expenditures shall be classified by fund, program and/or function, organization unit, activity, character (major account), and principal classes of objects.

3. Proprietary fund revenues and expenses shall be classified in essentially the same manner as those of similar business organizations, functions, or activities.

(m) A common terminology and classification shall be used consistently throughout the budget, the accounts and the financial reports of each fund. District boards of education shall adopt a chart of accounts prepared in conformity with established guidelines as follows:

1. The Commissioner shall prepare, publish and distribute a uniform chart of accounts for use in the accounting systems of district

boards of education utilizing the function oriented budget system and shall compel its use for financial reporting to the Department of Education.

2. The Commissioner shall publish and distribute Financial Accounting for Local and State School Systems, commonly referred to as Handbook 2R2 and developed by the National Center for Education Statistics, for use in the accounting systems of district boards of education utilizing the program oriented budget system and shall compel its use for financial reporting to the Department of Education. The first level of detail in the object codes of such systems shall be classified and identified as follows:

- i. Personal Services-Salaries 1;
- ii. Personal Services-Employee Benefits 2;
- iii. Purchased Professional and Technical Services 3;
- iv. Purchased Property Services 4;
- v. Other Purchased Services 5;
- vi. Supplies and Material 6;
- vii. Property 7; and
- viii. Other Miscellaneous 8.

(n) Monthly and annual financial reports shall be prepared as follows:

1. Monthly financial statements and reports of financial condition, operating results and other pertinent information shall be prepared, in accordance with directions issued by the Commissioner, to facilitate management control of financial operations, legislative oversight and, where necessary or desired, for external reporting purposes.

2. A Comprehensive Annual Financial Report (annual audit), including General Purpose Financial Statements in compliance with Governmental Finance Officers Association (GFOA) standards, covering all funds and account groups of the district board of education, including introductory section; appropriate combined, combining, and individual fund statements; notes to the financial statements; required supplementary information; schedules; narrative explanations; and statistical tables, shall be prepared and published. The Commissioner shall prepare, publish and distribute a uniform program and shall compel its use for preparing the Comprehensive Annual Financial Report (annual audit).

3. General Purpose Financial Statements may be issued separately from the Comprehensive Annual Financial Report. Such statements shall include the basic financial statements and notes to the financial statements that are essential to fair presentation of financial condition and results of operations (and changes in financial position of proprietary funds and similar trust funds). Such statements may also be required to be accompanied by required supplementary information, essential to financial reporting.

6:20-2.3 Conflicts between legal provisions and GAAP

(a) Where financial statements prepared in conformity with GAAP do not demonstrate finance-related legal and contractual compliance, the district board of education shall present such additional schedules and narrative explanations in the Comprehensive Annual Financial Report as may be necessary to report its legal compliance responsibilities and accountabilities.

(b) The accounting system shall be maintained on a legal-compliance basis, and shall include sufficient additional records to permit GAAP based reporting.

6:20-2.4 Accounting and reporting directives

The Commissioner shall prepare accounting and reporting directives to be used by school officials in keeping the double entry bookkeeping and accounting system mandated in this subchapter and shall from time to time prepare, publish and distribute books, materials or circulars for the guidance of school officials.

6:20-2.5 Supplies and equipment

(a) The Commissioner shall prescribe a list of articles to be regarded as supplies and equipment for accounting purposes.

(b) For the purpose of this section, "food supplies" shall include only those supplies which are to be eaten or drunk and those substances which may enter into the composition of a food in the operation of a school cafeteria or in a home economics class.

(c) Public notification of method of purchase:

1. Whenever any district board of education elects to purchase food supplies pursuant to this section, it shall adopt a policy stating what food supplies will be purchased without advertising for bids, designating a person or persons authorized to purchase food supplies, describing the procedure by which interested vendors may become eligible to submit quotations, and outlining the method by which the district board of education will solicit and accept quotations.

2. This policy shall be adopted before the opening of schools in September and shall be made known to the public.

(d) (No change).

(e) Paragraphs (d)1, 2 and 3 above shall not apply to food supplies purchased by advertising for bids.

6:20-2.6 Mechanical bookkeeping systems

(a) All mechanical or electronic data processing bookkeeping systems to be used by district boards of education shall be approved by the Commissioner prior to usage.

(b) District boards of education which contract for electronic data processing bookkeeping services shall annually have an audit prepared or obtain a copy of an audit of the internal controls of the service company or agency as prescribed by Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants and maintain a copy of such audit on file.

6:20-2.7 Employee organizational dues

(a) (No change).

(b) Employees desiring payroll deductions of organizational dues should indicate, in writing, their choice of employee organization. Any such written authorization may be withdrawn at any time by filing a notice with the secretary of the district board of education, according to directions promulgated by the Commissioner.

(c) (No change).

Renumber existing 6:20-2.10 through 2.12 as 2.8 through 2.10. (No change in text.)

6:20-2.11 Overexpenditure of funds

(a) A district board of education shall not incur any obligation or approve any payment in excess of the \*amount\* appropriated by the district board of education in the applicable line item account or program category account pursuant to N.J.S.A. 18A:22-8 and 18A:22-8.1.

(b) A district board of education anticipating an over-expenditure in either the current expense, capital outlay or debt service funds as designated in N.J.A.C. 6:20-2.2(c)1 shall proceed in the following manner:

1. (No change).

2. The county superintendent shall immediately notify the Commissioner, in writing, if the projected amount of the over-expenditure exceeds five percent of the district's current expense budget or \$100,000, whichever is lower.

3. (No change).

4. The county superintendent shall immediately notify the Commissioner, in writing, should it appear that an overexpenditure may occur and the district board of education is not taking adequate action to avoid an overexpenditure.

(c) (No change).

(d) By August 15, the county superintendent shall report to the Commissioner all overexpenditures as shown on the June report of the district board of education secretary filed pursuant to N.J.S.A. 18A:17-10.

(e) Should a district board of education fail to develop an acceptable remedial plan to eliminate the projected overexpenditure, the district may be disqualified for certification under the State's monitoring procedure. In those cases where the Commissioner determines that the failure to develop an acceptable remedial plan to eliminate the projected overexpenditure impacts the district's ability to meet its goals and objectives, the Commissioner shall recommend to the State Board of Education that the district's certification be rescinded.

(f) In the year following the year in which a deficit occurs, the net current expense budget and the maximum support budget of a district board of education shall be reduced by an amount equal to

**ADOPTIONS**

**HEALTH**

the deficit in any major account when calculating State aid entitlements for the second year following the year in which the deficit occurred.

6:20-2.12 Appropriation of free balance

(a) (No change).

(b) A district board of education, upon the advice of the chief school administrator, may request an exception, from the Commissioner, to the provision of (a) above.

(c) Any balance allowed pursuant to (a) or (b) above shall be exempt from the Commissioner's determination that a reallocation of resources is insufficient to meet the district board of education goals, objectives and standards.

6:20-2.13 Conformance date

Pursuant to N.J.S.A. 18A:4-14.1, all school districts shall conform to the requirements of this subchapter by July 1, 1991.

**HEALTH**

**HOSPITAL REIMBURSEMENT**

**(a)**

**Procedural and Methodological Regulations**

**Burn Care Unit Reporting**

**Adopted Amendment: N.J.A.C. 8:31B-3.19**

Proposed: October 17, 1988 at 20 N.J.R. 2541(a).

Adopted: January 10, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of Health Care Administration Board).

Filed: January 12, 1989 as R.1989 d.77, **without change.**

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

Effective Date: February 6, 1989.

Expiration Date: October 15, 1990.

**Summary of Public Comments and Agency Responses:**

COMMENT: Community Memorial Hospital asked what cost center will the Department assign Post ICU and Post CCU since UB-PS Revenue Codes are mapped to ICU and CCU respectively?

RESPONSE: Currently, the UB-PS rules do not provide for separate UB-PS Revenue Codes which identify "Post ICU" or "Post CCU". However, for the calculation of Measures of Resource Use, costs and revenues are to be reported in accordance with the cost center definitions under N.J.A.C. 8:31B-4.71, Reporting of costs and revenues.

Full text of the adoption follows.

8:31B-3.19 Patient care cost findings: Direct costs per case, physician and non-physician

(a) (No change.)

(b) Measures of resource use are as follows:

1. For each patient with a UB-PS, measures of resource use are calculated. These measures of resource use per patient with a reliable record are multiplied by the estimated number of cases determined in (a) above, and the total inpatient estimate of each measure of resource use is then adjusted to the actual amount of each measure. Hospitals shall make reasonable efforts to correct unacceptable data. Outpatient case-mix measures of resource use are then obtained in the aggregate from data reported to the New Jersey State Department of Health (until outpatient information is available under a Rule on Hospital Reporting of Uniform Bill-Patient Summaries (outpatient)).

Measure of Resource Use

Calculation of Inpatients

**ROUTINE SERVICES**

MSA & Medical-Surgical Acute Care Units

Patient Days<sup>1</sup>

Total LOS less ICU, CCU, NBN and OBS LOS ACU

PED & Pediatrics

PSA & Psychiatric Acute Care Units  
PSY & Psychiatric/Psychological Services

OBS OBSTETRICS  
BCU Burn Care Unit  
ICU Intensive Care Unit

Patient Days<sup>1</sup>

BCU LOS  
ICU + CCU LOS

CCU Coronary Care Unit  
NNI Neo-Natal Intensive Care Unit

NNI Patient Days

Total ICU LOS for Newborn DRGs

NBN Newborn Nursery

NBN Patient Days

Total LOS for Newborn DRGs less ICU LOS

**AMBULATORY SERVICES**

EMR Emergency Service

EMR Charges

EMR Admissions (In-patient EMR Revenue EMR Admissions)

CLN Clinics

CLN Charges

None<sup>2</sup>

HHA Home Health Agency

OHS Charges

None

**ANCILLARY SERVICES**

ANS Anesthesiology  
CCA Cardiac Catheterization  
DEL Delivery and Labor Room  
DIA Dialysis  
DRU Drugs Sold to Patients  
EKG Electrocardiology and Diagnostic

ANS Charges

Direct

CCA Charges

Direct

DEL Charges

Direct

DIA Charges

Direct

PHM Charges (DRU)

Direct

EDG Charges

Direct

NEU Neurology  
LAB Laboratory

BBK Charges & LAB Charges

Direct

MSS	Medical Surgical Supplies		
	Sold to Patients	CSS Charges (MSS)	Direct
NMD	Nuclear Medicine	NMD Charges	Direct
OCC	Occupational and		
&	Recreational	OPM Charges	Direct
SPA	Therapy & Speech		
	Pathology and Audiology		
ORG	Organ Acquisition &	ORR Charges	Direct
&	Operating and		
ORR	Recovery Rooms		
PHT	Physical Therapy	PHT Charges	Direct
RAD	Diagnostic Radiology	RAD Charges	Direct
RSP	Respiratory Therapy	RSP Charges	Direct
THR	Therapeutic Radiology	THR Charges	Direct

- 2. (No change.)
- (c) (No change.)

<sup>1</sup>Patient days will be employed as the Measures of Resource Use to allocate MSA, PED, PSA, and OBS nursing costs until such time as Relative Intensity Measures (RIMs) for Case-mix Nursing Performance Study will be used. A RIM is a Measure of Resource Use which is derived from nursing activity, and is used to distribute reported general nursing costs based upon the relationship between nursing activity and costs. While patient days are used, the MSA, PED, PSA, OBS centers will be combined into ACU and ICU, and CCU will be combined into ICU. All other routine centers will remain as above. Effective when RIMs are implemented, patients cared for in the ICU, CCU, or NNI will have the Special Care Unit Days used as the cost calculation for Measure of Resource Use for the Length of Stay (LOS) in the Special Care Unit and the appropriate Relative Intensity Measure (RIM) equation will be utilized for all additional days.

- <sup>2</sup>(No change.)
- <sup>3</sup>(No change.)

**(a)**

**Procedural and Methodological Regulations  
Adjustment of Charges**

**Adopted Amendment: N.J.A.C. 8:31B-3.43**

Proposed: October 17, 1988 at 20 N.J.R. 2542(a).  
 Adopted: January 10, 1989 by Molly Joel Coye, M.D., M.P.H.,  
 Commissioner, Department of Health (with approval of the  
 Health Care Administration Board).  
 Filed: January 12, 1989 as R.1989 d.79, **without change**.  
 Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and  
 26:2H-18d.  
 Effective Date: February 6, 1989.  
 Expiration Date: October 15, 1990.

**Summary of Public Comments and Agency Responses:**

COMMENT: Community Memorial Hospital commented that the Department is recommending that hospitals reduce time frames for implementation but the Department fails to adhere to their own on various issues.

RESPONSE: The Department acknowledges the hospital's comment regarding the Department's responsibility to adhere to its own established time frames on various issues. Continuing efforts on the part of the Department staff are being made to meet future regulatory time frames.

Full text of the adoption follows.

8:31B-3.43 Adjustment of charges

- (a) Unless otherwise ordered by the Commission, the proposed Schedule of Rates shall be implemented on the first day of the month following 30 working days after receipt of the Schedule of Rates. Fifteen working days prior to this implementation a hospital shall:
  - 1.-3. (No change.)
  - (b)-(d) (No change.)

**(b)**

**Procedural and Methodological Regulations  
Billing Exceptions**

**Adopted Amendment: N.J.A.C. 8:31B-3.44**

Proposed: October 17, 1988 at 20 N.J.R. 2542(b).  
 Adopted: January 10, 1989 by Molly Joel Coye, M.D., M.P.H.,  
 Commissioner, Department of Health (with approval of the  
 Health Care Administration Board).  
 Filed: January 12, 1989 as R.1989 d.80, **without change**.  
 Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and  
 26:2H-18d.  
 Effective Date: February 6, 1989.  
 Expiration Date: October 15, 1990.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the adoption follows.

8:31B-3.44 Billing exceptions

- (a) Pursuant to N.J.A.C. 8:31B-3.71 through 3.86, reconciliation with respect to institution's payers, insofar as practical and equitable, shall be based upon the Schedule of Rates contained in the Rate Order, for each institution, as approved or modified by the Commission and on actual case mix. In order to minimize reconciliation adjustment and to stabilize cash flow, any payer may implement a case-mix adjusted periodic intermittent payment (PIP) system as adjusted to include payer differentials, working capital and uncompensated care described in N.J.A.C. 8:31B-3.39 through 3.41, and any automatic adjustment described in N.J.A.C. 8:31B-3.71 through 3.86. Disagreements between payers and the institution may be brought to the attention of the Commissioner by either party for resolution. Reimbursement shall be subject to provisions in N.J.A.C. 8:31B-3.38, and 3.71 through 3.86 for the final patient settlement for the following purposes:
  - 1.-2. (No change.)
  - 3. Outpatient ancillary services and all Outpatient Emergency Room, Clinic, Home Health Services, Ambulatory Surgery, Same Day Psychiatry, Private Outpatient Services, and Same Day Surgery Services, if approved by the Commission, will be reconciled in the same manner as outpatient visits.

4. (No change.)  
 5. Payment for patients in a DRG with poorly defined clinical characteristics will be consistent with N.J.A.C. 8:31B-3.38(c)2iv.

**(a)**

**Procedural and Methodological Regulations  
 Cost Components and Proxies for the Economic  
 Factor**

**Adopted Amendment: N.J.A.C. 8:31B-3, Appendix II**

Proposed: October 17, 1988 at 20 N.J.R. 2543(a).  
 Adopted: January 10, 1989 by Molly Joel Coye, M.D., M.P.H.,  
 Commissioner, Department of Health (with approval of the  
 Health Care Administration Board).  
 Filed: January 12, 1989 as R.1989 d.78, **without change**.  
 Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and  
 26:2H-18d.  
 Effective Date: February 6, 1989.  
 Expiration Date: October 15, 1990.

**Summary of Public Comments and Agency Responses:  
 No comments received.**

Full text of the adoption follows.

8:31B-3, Appendix II

**APPENDIX II  
 COST COMPONENTS AND PROXIES  
 FOR THE ECONOMIC FACTOR**

LABOR 1.-LABOR 3. (No change.)  
 SUPPLIES 1.-SUPPLIES 4. (No change.)  
 SUPPLIES 5.  
 COST COMPONENT: Laundry and Linen Supplies  
 SHARE COST CENTER: Supply costs reported in  
 L & L Cost Center  
 PROXIES: PPI: 0671 Soap and Synthetic Detergents (60%)  
 CPI: Textile House Furnishings (40%)  
 SOURCE: BLS, Producer Price Index and Consumer Price Index  
 SUPPLIES 6.-SUPPLIES 10. (No change.)  
 OTHER 1. (No change.)  
 OTHER 2.  
 COST COMPONENT: Contracted Laundry and Linen  
 SHARE COST CENTER: Contracted service costs reported in  
 L & L Cost Center  
 PROXIES: CPI: Laundry and dry cleaning other than coin oper-  
 ated (80%)  
 CPI: Textile House Furnishings (20%)  
 SOURCE: BLS, Consumer Price Index  
 OTHER 3.-OTHER 6. (No change.)

**(b)**

**DIVISION OF HEALTH FACILITIES EVALUATION**

**Hospital Facilities  
 Standards for Licensure; Confidentiality**

**Adopted Amendment: N.J.A.C. 8:43B-1.10**

Proposed: September 6, 1988 at 20 N.J.R. 2221(b)  
 Adopted: January 10, 1989 by Molly Joel Coye, M.D., M.P.H.,  
 Commissioner, Department of Health (with approval of the  
 Health Care Administration Board).  
 Filed: January 13, 1989 as R.1989 d.87, **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: February 6, 1989.  
 Expiration Date: January 21, 1991.

**Summary of Public Comments and Agency Responses:**

The proposed amendment elicited letters of comment from 21 hospitals, a physician, an attorney, the New Jersey Hospital Association, and the New Jersey Association of Quality Assurance Professionals. The Department responded to the various comments and recommendations in a letter which was sent to each of the commenters. Copies of the letters of comment submitted to the Department and the Departmental letter of response are on file at the Office of Administrative Law and at the Standards Program of the Department.

On the basis of the comments and recommendations received, the Department has made changes to the proposed amendment. These changes place three conditions on the public disclosure of information obtained by the Department through inspection authorized by N.J.S.A. 26:2H-1 et seq. None of the conditions will interfere with the capability of the rule to provide consumers of hospital services with potentially useful information. Rather, the changes are intended to ensure that the names of particular hospital employees are not contained in publicly disclosed information and that the hospital which is the subject of such information receives a copy of the inspection report at least 30 days prior to public disclosure. On the basis of a recommendation of the Health Care Administration Board, the proposed amendment has been revised so as to provide for the simultaneous release of the inspection report and the comment by the hospital on the report. The Department maintains that inclusion of the names of employees would not serve the expressed purpose of the rule. Also, although the hospital is to receive inspection reports prior to public disclosure, the rewritten amendment permits immediate disclosure in the event that a delay would jeopardize public health and safety. The changes to the proposed amendment clarify the rule by expressing current Departmental policy. The Department has made the changes to the amendment because the comments which the Department received suggest that public understanding of the rule could be enhanced by making the amendment more explicit.

The following is a summary of the comments received by the Department and the corresponding Departmental responses.

**COMMENT:** The rule should protect not only the confidentiality of hospital patients, but also the confidentiality of hospital employees, including the medical staff and volunteers.

**RESPONSE:** The Department has the responsibility of protecting the patient. The provisions of the proposed amendment reflect this responsibility. The amendment, however, has been revised in such a way that neither the names of patients nor the names of employees may be included in inspection reports disclosed to the public. The Department maintains that the public interest is not served by the disclosure of the names of hospital employees who are involved in events which become the subject of inspection reports. An objective description of the events is sufficient for the purpose of assisting the public in making informed decisions regarding hospital care. In fact, it has been Departmental policy not to disclose the names of hospital employees. Although one commenter suggested that it may at times be necessary to disclose the identity of patients, the Department contends that patient confidentiality is not incompatible with the Department's aim to protect the health of New Jersey residents. It should be noted that the provisions for confidentiality apply to the public disclosure of information and do not prevent the Department from obtaining information which identifies patients or hospital employees.

**COMMENT:** If information concerning a hospital is being disclosed to the public, then the hospital should be notified 30 days prior to disclosure and should have the opportunity to review and comment on the information. The comments of the hospital should be included when the information is released.

**RESPONSE:** The proposed amendment has been revised so as to ensure that the hospital receives inspection reports at least 30 days prior to public disclosure of these reports, unless the Commissioner of Health determines that protection of public health and safety necessitates immediate disclosure. This provision gives the hospital the opportunity to comment on the information to be disclosed. The revised amendment also ensures that the comments of the hospital will be released by the Department together with the inspection report. The Department, however, contends that it is unnecessary to notify a hospital each time that information is requested by the public.

**COMMENT:** The proposed amendment would not achieve its purpose of assisting consumers in making informed decisions regarding cost-effective hospital care. The information which the Department would disclose to the public could be misleading, confusing, and a source of undue concern on the part of the public. This problem arises from the

fact that the information may be taken out of context as in, for example, the case of the deficiency profile, which summarizes the deficiencies of a facility over a given period of time.

RESPONSE: The Department maintains that the amendment will be capable of achieving its stated purpose. The inspection reports which may be disclosed by the Department do not take information out of context. In fact, the reports are quite specific and describe events in detail. They represent objective statements of actual observations. Although some of the commenters stated their belief that inspection reports could be misleading, the Department was not provided with support for this conclusion. It is difficult to determine whether or not a report will mislead someone. The Department attempts to minimize the possibility of misunderstanding and confusion by preparing detailed reports which accurately relate facts. Deficiency profiles for hospitals have not yet been distributed to the public. Future distribution of such profiles would be accompanied by distribution of an explanatory consumer guide designed to assist the reader in interpreting the information contained in the deficiency profile.

COMMENT: The Department should add explanatory information to any inspection reports which are disclosed to the public. Such information should include, for example, whether or not the hospital's license has been renewed and whether or not the deficiency has been corrected.

RESPONSE: Inspection reports are intended to provide explanations only to the extent that the reports include the observations which support deficiency citations. Information concerning the renewal of facility licenses and the correction of deficiencies is available to the public independently of inspection reports.

COMMENT: There are cases in which disclosable information pertaining to a patient is so unique that a reader of the inspection report may be able to identify the patient.

RESPONSE: The Department contends that the amendment provides a reasonable measure of privacy to patients while allowing the public access to important and useful information.

COMMENT: Deficiency citations make reference to broad areas and, therefore, do not provide useful information to potential consumers of hospital services. Also, these citations do not indicate the severity of the deficiencies. The Department should ensure that citations are "of a serious nature," and disclosed information must be pertinent to quality of hospital care.

RESPONSE: The Department contends that inspection reports do more than restate rules with which a hospital has failed to comply. Inspection reports contain a considerable amount of specific information concerning actual events. The Department agrees that deficiencies cited should be related to the quality of care provided. The process of standards development takes into consideration the need for each minimum standard to address an area of importance with respect to patient health or safety. It is both impractical and unnecessary to establish the relevance of a rule each time a violation of the rule is observed.

COMMENT: The licensure survey process may result in the discovery of information regarding the internal affairs of the hospital, such as peer review or employee relations. One commenter listed the type of information which should not be disclosed to the public. These included information related to internal investigations, "medical staff credentialing and privileging," disciplinary procedures, "actual or potential litigation in which the hospital is an interested party," contracts, collective bargaining agreements, individual privacy, employment status, and the right of the hospital to receive funds "from any governmental or private entity."

RESPONSE: During licensure inspections, the Department collects only information pertinent to the determination of compliance with licensure rules. Some of the information described by the commenter, such as "all information concerning actual or potential litigation," is too comprehensive to be specifically protected from public disclosure.

COMMENT: Licensure surveys "are not and never were intended as a vehicle to provide information to the public for use in making decisions about where to obtain health care."

RESPONSE: Disclosure of inspection reports is consistent with the Department's policy to protect and promote the health of the inhabitants of New Jersey.

COMMENT: The proposed amendment is ambiguous. It fails to define the information which may be publicly disclosed.

RESPONSE: The Department disagrees with the commenter's claim. The amendment specifically refers to information received by the Department through inspection authorized by N.J.S.A. 26:2H-1 et seq. which does not indicate names of hospital patients or employees.

COMMENT: Disclosure of information obtained through licensure surveys can only serve the public interest if the information is complete and accurate. If a report of an inspection were to be released at any point in the investigative process prior to the conclusion, this condition of completeness and accuracy would not be satisfied. While one commenter stated that a hospital has a right to a hearing in accordance with N.J.S.A. 26:2H-13 if it disputes the Department's findings and that information should be withheld from the public "until the hearing has been completed and the Commissioner renders a written decision," another commenter recommended that the amendment be revised so as to establish this same process of a hearing, including a formal decision. The inspection report should, at least, indicate that the report is being disputed by the hospital when this is the case.

RESPONSE: The Department agrees that inspection reports need to be complete and accurate. For this reason, an inspection report is not prepared or released until the Department's investigation upon which the report is based has been completed. A hearing may follow, but is not part of, the investigative process. These distinct processes should not be integrated in the amendment in a way in which they are not integrated in fact. Consequently, the amendment was not written in the manner suggested. As far as the hospital's right to a hearing in accordance with N.J.S.A. 26:2H-13 is concerned, a hearing may be requested in cases in which the Department serves the hospital with notice of assessment of penalties, revocation, suspension, the placing on probationary or provisional license, or denial of a license. It is not within the scope of the amendment to expand the situations in which a hospital may request a hearing. It should be noted that the information attached to the notice of assessment of penalty is considered to be public information, in accordance with the Department's interpretation of N.J.S.A. 26:2H-1 et seq.

COMMENT: Health care institutions should have the opportunity to comment on proposed amendments to rules. The 30-day period for public comment which began on the September 6, 1988, publication date of the notice of proposal for the amendment was not sufficient to satisfy the intent of the Administrative Procedure Act. Interested persons, therefore, should be given "an opportunity to provide comments orally at a public hearing."

RESPONSE: The Department maintains that interested persons have been given ample opportunity to comment on the proposed amendment. The Department received 26 letters of comment, including letters from 21 hospitals, which were submitted prior to the end of the public comment period. The relative brevity of the proposed amendment and the timely submission of letters of comment to the Department suggest that a public hearing is unnecessary in this case.

Full text of the adoption follows (additions to the proposal indicated in boldface with asterisks \*thus\*; deletions from the proposal indicated in brackets with asterisks \*[thus]\*).

8:43B-1.10 Information not to be disclosed

(a) Information received by the Department of Health through inspection authorized by N.J.S.A. 26:2H-1 et seq. shall not be disclosed to the public in such a way as to \*[permit]\* **\*indicate\*** the \*[identification]\* **\*names\*** of the specific patients **\*or hospital employees\*** to whom the information pertains. **\*The Department shall forward inspection reports to the hospital facility at least 30 days prior to public disclosure. In all cases in which the hospital comments on the inspection report, the hospital comments and the inspection report shall be released simultaneously by the Department. In cases in which the New Jersey State Commissioner of Health determines that protection of public health and safety necessitates immediate public disclosure of information, inspection reports may be disclosed immediately.\***

(b) (No change.)

**CORRECTIONS****(a)****THE COMMISSIONER****Medical and Health Services  
Placement of Infants****Adopted Amendment: N.J.A.C. 10A:16-6.6**

Proposed: November 7, 1988, at 20 N.J.R. 2747(a).

Adopted: January 6, 1989 by William H. Fauver, Commissioner,  
Department of Corrections.Filed: January 6, 1989 as R.1989 d.68, with technical changes not  
requiring additional public notice and comment (see N.J.A.C.  
1:30-4.3(c)).

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: February 6, 1989.

Expiration Date: April 6, 1992.

**Summary of Public Comments and Agency Responses:**The Department of Corrections received one comment which is ad-  
dressed below.COMMENT: A commenter noted that the word "further" is mislead-  
ing in N.J.A.C. 10A:16-6.6(d) and (e) because the Department of Correc-  
tions does not pay any medical expenses incurred by an infant born to  
a female inmate.RESPONSE: The commenter is correct. The Department of Correc-  
tions does not pay any infant medical expenses. To clarify this matter,  
the word "further" has been deleted from subsections (d) and (e).**Full text** of the adoption follows (deletions from proposal indicated  
in brackets with asterisks \*[thus]\*).

10A:16-6.6 Placement of infants

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

(d) If the inmate chooses to retain custody of the child and in so  
doing grants temporary custody of the child to a family member, the  
Department shall not be responsible for any \*[further]\* infant medi-  
cal costs.(e) If the inmate chooses to place the child in a foster home or  
release the child for adoption, the Division of Youth and Family  
Services (DYFS) shall be granted custody of the child and the De-  
partment shall assume no responsibility for any \*[further]\* infant  
medical costs.**LABOR****DIVISION OF WORKPLACE STANDARDS****(b)****Safety and Health Standards for Public Employees;  
Access to Employee Exposure and Medical  
Records****Adopted Amendment: N.J.A.C. 12:100-4.2**

Proposed: December 5, 1988 at 20 N.J.R. 2995(a).

Adopted: January 13, 1989 by Charles Serraino, Commissioner,  
Department of Labor.

Filed: January 13, 1989 as R.1989 d.82, without change.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), and 34:6A-25 et seq.,  
specifically 34:6A-30.

Effective Date: February 6, 1989.

Expiration Date: November 5, 1989.

**Summary of Public Comments and Agency Responses:****No comments received.****Full text** of the adoption follows.

12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1910, General Indus-  
try Standards with the amendments published in the Federal Register  
through September 29, 1988, with certain exceptions noted in (b) and  
(c) below, are adopted as occupational safety and health standards  
and shall include:

1.-19. (No change.)

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

**(c)****Safety and Health Standards for Public Employees;  
Work in Confined Spaces****Adopted Amendment: N.J.A.C. 12:100-9.18**

Proposed: November 21, 1988 at 20 N.J.R. 2855(b).

Adopted: January 13, 1989 by Charles Serraino, Commissioner,  
Department of Labor.

Filed: January 13, 1989 as R.1989 d.83, without change.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:6A-25 et seq.,  
specifically 34:6A-30.

Effective Date: February 6, 1989.

Expiration Date: November 5, 1989.

**Summary of Public Comments and Agency Responses:****No comments received.****Full text** of the adoption follows.

12:100-9.18 Contractors

(a) (No change.)

(b) An employer who retains the services of a contractor shall  
inform the contractor of the confined space program and other  
applicable safety rules of the facility. The employer shall inform the  
contractor of those portions of the emergency action plan, based on  
N.J.A.C. 12:100-4.2(a) Subpart E, Means of Egress, which are appli-  
cable to the employees of the contractor.**COMMERCE, ENERGY AND  
ECONOMIC DEVELOPMENT****NEW JERSEY URBAN DEVELOPMENT  
CORPORATION****(d)****Urban Small Business Incubator Program****Adopted New Rules: N.J.A.C. 12A:80-1**

Proposed: October 17, 1988 at 20 N.J.R. 2524(b).

Adopted: December 15, 1988 by the New Jersey Urban  
Development Corporation, Elizabeth F. Defeis, Chair.Filed: January 17, 1989 as R.1989 d.91, with a substantive change  
not requiring additional public notice and comment (see  
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 55:19-6(d).

Effective Date: February 6, 1989.

Expiration Date: February 6, 1994.

**Summary of Public Comments and Agency Response:****No comment received.**The Urban Development Corporation has added upon adoption a  
reasonable definition of "time of the initiation of the project" for the  
purpose of clarification of the rules.**Full text** of the adoption follows (additions to proposal indicated  
in boldface with asterisks \*thus\*):

CHAPTER 80  
URBAN SMALL BUSINESS INCUBATOR PROGRAM

SUBCHAPTER 1. URBAN SMALL BUSINESS  
PROGRAM REQUIREMENTS

12A:80-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Urban Development Corporation to implement a program in the Corporation for the purpose of creating small business incubator facilities in certain designated municipalities in the State.

(b) This program is established for the specific purpose of creating, through joint venture agreements, direct financing by the Corporation, indirect financing by the Corporation, and by other means to facilitate and/or manage the establishment and development of small business incubators in certain designated municipalities in the State.

(c) Applications and questions regarding participation in the program should be directed to:

New Jersey Urban Development Corporation  
150 West State Street  
CN 834  
Trenton, New Jersey 08625

12A:80-1.2 Definitions

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

“Board” or “Board of Directors” means the Directors of the New Jersey Urban Development Corporation, pursuant to N.J.S.A. 55:19-4.

“Civic project” means a project designed and intended to provide facilities for educational, cultural, health, recreational, community, or other civic purposes.

“Corporation” means the New Jersey Urban Development Corporation, established pursuant to N.J.S.A. 55:19-1 et seq.

“Cost of administration” means the cost of wages, salaries, or fees for the incubator management staff, as well as cost for supplies and maintenance for the incubator facility.

“Educational institution” means a private college or university, or a State sponsored and supported college or university.

“Eligible project costs” means the costs of developing, executing and making operational a Board approved project. Eligible project costs includes the cost:

1. Of purchasing, leasing, condemning, or otherwise acquiring land and/or other property, or an interest therein, in the designated project or as necessary for a right-of-way or other easement to or from the project area;
2. Incurred for or in connection with or incidental to acquiring the land, property, or interest;
3. Incurred for or in connection with the relocation and moving of persons displaced by acquisition;
4. Of developing or redevelopment, including:
  - i. The comprehensive renovation or rehabilitation of the land, property or interest;
  - ii. The cost of equipment and fixtures, which are part of the real estate, and the cost of production machinery and equipment necessary for the operation of the project; and
  - iii. The disposition of land or other property for these purposes.
5. Of demolishing, removing, relocating, altering, constructing, installing or repairing any land or any building, street, highway, alley, utility, service or other structure or improvement;
6. Of acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements necessary to the project;
7. Of planning and/or feasibility studies of proposed projects that are likely to result in UDC applications for financial assistance; and
8. Other incurred or incidental cost approved by the Board.

“Female business” means those female businesses duly approved pursuant to the New Jersey Set-Aside Act for Small Business, Female Businesses, Minority Businesses, N.J.S.A. 52:32-17 et seq. (See also N.J.A.C. 12A:10-1).

“Financial assistance” means, but is not limited to, direct loans, loan guarantees, equity investment, and/or stock underwriting purchases provided by the Corporation.

“For-profit corporation” means a corporation, organized and incorporated for the purpose of making a profit and as defined by N.J.S.A. 14A:1-2(g).

“Industrial project” means a project designed to provide facilities for manufacturing, industrial, commercial, wholesale, retail, warehousing, or research and development purposes.

“Minority business” means a minority business duly approved pursuant to the New Jersey Set-Aside Act for Small Business, Female Businesses and Minority Businesses, N.J.S.A. 52:32-17 et seq. (See also N.J.A.C. 12A:10-1).

“Multi-purpose project” means a project combining the purposes of two or more project classifications enumerated in this chapter.

“Non-profit corporation” means a corporation organized and incorporated pursuant to N.J.S.A. 15A:1-2.

“Project” means specific work or improvement including lands, buildings, improvements, real and personal property or any interest therein (including lands under water, riparian rights, space rights, and air rights) acquired, owned, constructed, reconstructed, rehabilitated, or improved by the Corporation, a subsidiary of the Corporation, or by any other person, firm, or corporate entity under agreement with the Corporation or pursuant to the provisions of the New Jersey Urban Development Corporation Act.

“Qualified municipality” means any municipality which, at the time of the initiation of the project, was eligible to receive State aid and under P.L. 1977, c. 260 (N.J.S.A. 52:27D-162 et seq.); or any other municipality which in any year subsequent to the enactment of P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.); was eligible to receive State aid pursuant to the Act; or any municipality which has a population of 15,000 or less, according to the most recent Federal decennial census; population density of 5,000 or more per square mile; 100 or more children enrolled in the Aid to Family with Dependent Children Program, according to the data available to and utilized by the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs to determine eligibility for State aid and under the provisions of P.L. 1978, c. 14; an equalized tax rate which exceeds the State equalized tax rate; and an equalized valuation per capita which is less than the State equalized valuation per capita.

“Small business” means a business duly approved pursuant to the New Jersey Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses, N.J.S.A. 52:32-17 et seq. (see also N.J.A.C. 12A:10-1).

“Small business incubator” means a facility owned and/or operated by a sponsor with some type of financial assistance from the Corporation. The facility may provide any of the following services, or any others as approved by the Board:

1. Physical space in the incubator;
2. Business and management assistance, which may include access to experts in professional areas such as:
  - i. Bookkeeping and accounting;
  - ii. Legal services;
  - iii. Financing;
  - iv. Product marketing; and
  - v. Engineering.
3. Facility services, which may include, but are not limited to:
  - i. Typing and reception work;
  - ii. Cleaning and building security;
  - iii. Conference facilities;
  - iv. Laboratory and library facilities;
  - v. Copy or duplication equipment;
  - vi. Computers; and
  - vii. Other electronic equipment.

“Sponsor” means an educational institution, local government unit, county government unit, economic development group, private-for-profit business, non-profit agency, or the Corporation.

“Subsidiary” means a corporation established by resolution of the Corporation, that has a majority of its outstanding voting shares

## ADOPTIONS

owned by the Corporation or where the Corporation has the power to designate, and has so designated, a majority of the directors of such corporation.

**“Time of the initiation of the project” means the date and time of physical receipt of a completed application by the Corporation to its designated agent.”\***

### 12A:80-1.3 Application for the establishment of a small business incubator

(a) Each application for the establishment of a small business incubator shall be on forms prescribed by the Corporation and be accompanied by the following:

1. A non-refundable application fee of \$250.00;
2. Evidence of support of the municipality in which the small business incubator is to be located. For purposes of this chapter, evidence of municipal support shall mean:
  - i. A certified copy of a resolution of the governing body of the local municipality;
  - ii. A letter of support from the chief executive of the local municipality; and
  - iii. Where applicable, a notarized letter from the local planning or zoning board which indicates that the project complies with local zoning requirements or has obtained the necessary variance.
3. A feasibility study of the incubator proposal which shall include:
  - i. Total cost of the establishment of the incubator, such as necessary lease, purchase, renovation, or construction costs associated with the site and/or structure;
  - ii. Cost of maintenance of the site and structures including utility costs and costs of financing;
  - iii. A 10 year projection of operating expenses, including but not limited to:
    - (1) Salary, wages, and compensation paid to the incubator manager and staff; and
    - (2) Administrative cost associated with providing services and supervising the incubator;
  - iv. A three-year projection of the sources of funding for operating expenses;
  - v. A projection of income to be derived from the incubator, including but not limited to:
    - (1) Rental fees collected from leases;
    - (2) Annual local cash contributions;
    - (3) The value of in-kind services; and
    - (4) If applicable, grants from other sources other than the Corporation;
  - vi. Prospects of attracting suitable business to the incubator and the overall ability of the sponsor to develop and market the incubator;
  - vii. The ownership structure for the incubator, including the qualifications of the incubator principals and managers;
  - viii. Any policies for screening business tenants, concerning activities that tenants may or may not engage in, and a graduation policy, if applicable;
  - ix. A description of the services to be supplied to the tenants of the small business incubator;
  - x. A statement attesting that “but for” financial assistance from the Corporation, the project would not be possible;
  - xi. Evidence of all requisite Federal and/or State environmental permits, where necessary, for the incubator project; and
  - xii. A statement of the type and amount of financial assistance requested from the Corporation as well as the source(s) that will provide capital for the incubator project.

### 12A:80-1.4 Time for application for establishment of a small business incubator

A sponsor may apply to the Corporation at any time for financial assistance in establishing a small business incubator. However, the Corporation may establish deadlines for the receipt and approval of applications, if it is in the best interest of the program.

## COMMERCE AND ECONOMIC DEVELOPMENT

### 12A:80-1.5 Direct loans from the Corporation to a small business incubator

(a) No more than \$6 million shall be allocated to any one county from all of the Corporation's development programs during the period in which the Corporation is allocating any of the \$30 million provided by Community Development Bond Act, P.L. 1981, c. 486.

(b) The Corporation may provide financial assistance to a small business incubator in the form of a direct loan from the Corporation in an amount up to 50 percent of the total eligible project cost, or \$500,000, whichever is less. For purposes of this chapter, total eligible project cost shall be deemed to be the direct cost of the acquisition, construction, expansion, and/or renovation of a building or other structure. Eligible project cost shall also be deemed to be the direct cost for the purchase, lease, or otherwise acquisition of equipment and furnishing of the small business incubator facility.

(c) Terms for repayment of direct loans from the Corporation shall not exceed a period of 20 years.

(d) The Corporation may defer repayment of loans up to a period of two years for the purpose of easing project start-up cost. If a loan deferral is granted, it shall not mean a waiver of interest incurred on the loan for the period payments are deferred.

(e) Direct loans from the Corporation may not be used for operating costs for small business incubator.

(f) Direct loans from the Corporation may only be used to purchase or construct fixed assets.

(g) Direct loans from the Corporation will only be granted when the project sponsor has secured interim construction financing. Loan proceeds will be disbursed only upon project completion to the satisfaction of the Corporation.

(h) The minimum amount of financial assistance from the Corporation shall be \$50,000 for development proceeds, and \$10,000 for feasibility studies.

### 12A:80-1.6 Direct Corporation investment in a small business incubator

(a) The Corporation may directly invest in a small business incubator through the purchase of stock of the sponsor or a Corporation subsidiary formed for the purpose of investing in the incubator project or through the acquisition of other forms of ownership in the project.

(b) The sale of stock in the subsidiary of the Corporation shall be for the purpose of providing funds for capital investment in the small business incubator project.

(c) If the Corporation or its subsidiary assumes an equity interest in the small business incubator project, the owner, partner, or other business entity shall be required to comply with all Corporation rules and requirements.

### 12A:80-1.7 Corporation grants to small business incubators

Grants may be made by the Corporation to incubator sponsors, when determined by the Board of Directors to be necessary and appropriate.

### 12A:80-1.8 Corporation seed venture fund investment

(a) The Corporation may provide financial assistance to a small business incubator through participation in a seed venture fund.

(b) If the Corporation participates in a seed venture fund, it will be as a limited partner.

(c) The purpose of the fund will be to invest in Corporation financed small business incubator tenant firms.

### 12A:80-1.9 Evaluation of application for financial assistance from the Corporation

(a) The Executive Director and the Corporation's Project Review Committee shall evaluate each application for financial assistance from the Corporation considering the following factors:

1. The distress level of the municipality in which the project is to be located, as well as the immediate area of the project;
2. The ratio of total Corporation financing to permanent jobs created as a result of the financing;
3. The amount of new tax ratables created within the municipality where the project is located;

4. The amount of financing from the project from sources other than the Corporation;
5. The impact the project will have in stimulating investment and development in the municipality and the immediate area in which the project is located;
6. The readiness of the project to proceed and the likely success of the project;
7. The return on the investment made by the Corporation in the project; and
8. The degree of support for, participation in, and/or consultation with the community and municipality in which the project is to be located.

(b) After the evaluation of projects by the Executive Director and the Project Review Committee is completed, the project will be presented to the Board for preliminary approval. The project will then be reviewed again by the Executive Director and Project Review Committee prior to the Board's final decision.

(c) The Corporation shall have 120 days in which to review the request for financial assistance and advise the sponsor that:

1. The request has been approved;
2. The request has been approved contingent on modification;
3. The request has been rejected; or
4. The request is continuing to be considered pending additional information being received.

12A:80-1.10 Small business, female business and minority business set-aside plans and requirements

(a) Each project approved to receive financial assistance from the Corporation shall set aside no less than 10 percent of the aggregate project construction cost of the project for the purpose of providing contract opportunities for small businesses, female businesses, and minority businesses.

(b) The sponsor of the project shall identify the small businesses, women-owned businesses and minority-owned businesses that will participate, by construction trade, together with the contract sum to be paid to each small business, female business and minority business.

(c) In determining compliance with these goals, a sponsor may only utilize those small businesses, women-owned businesses, and minority-owned businesses duly approved and registered pursuant to the Set-Aside Act for Small Businesses, Female Businesses and Minority Businesses, N.J.S.A. 52:32-17 et seq. (See N.J.A.C. 12A:10-1).

12A:80-1.11 Reporting and compliance

(a) Upon the receipt of Corporation financial assistance, the project sponsor shall be required to submit an annual report to the Corporation which shall include the following:

1. An annual audit of the small business incubator by a certified public accountant;
2. Changes in any incubator policies or marketing plans affecting incubator occupancy or the financial viability of the incubator;
3. Plans for capital investments;
4. Occupancy rate of the incubator;
5. A listing of all the tenants in the incubator during the year;
6. Number of employees utilized by each tenant;
7. Current and 10-year projected budgets; and
8. Any other information that the Corporation may require.

12A:80-1.12 Rescission of financial assistance from the Corporation

(a) The Board of the Corporation may, in its discretion, rescind all or part of the financial assistance to a small business incubator project when it has become reasonably evident that:

1. The commitment of financial resources from other sources has been withdrawn or amended in such a manner as to undermine the investment by the Corporation;
2. The project is judged no longer capable of repaying the Corporation;
3. The project is judged incapable of achieving its set-aside requirements, under N.J.A.C. 12A:80-1.10 or the project is not employing good faith efforts to achieve these requirements; or
4. The sponsors and/or other participants in the project are found not to be of good moral character. Lack of good moral character shall include, but not be limited to, convictions of offenses or crimes.

(b) Upon determination by the Corporation that financial assistance from the Corporation shall be rescinded, the Corporation shall send a certified letter to the sponsor informing of the rescission and the right of the sponsor to appeal the decision pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-10, and the uniform Administrative Practice Rules, N.J.A.C. 1:1.

(a)

**Urban Development Program**

**Adopted New Rules: N.J.A.C. 12A:81-1**

Proposed: October 17, 1988 at 20 N.J.R. 2527(a).

Adopted: December 15, 1988 by the New Jersey Urban Development Corporation, Elizabeth F. Defeis, Chair.

Filed: January 17, 1989 as R.1989 d.92, with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 55:19-6(d).

Effective Date: February 6, 1989.

Expiration Date: February 6, 1994.

Summary of Public Comments and Agency Response:

**No comment received.**

The Urban Development Corporation has added upon adoption a reasonable definition of "time of the initiation of the project" for the purpose of clarification of the rules.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*):

CHAPTER 81

URBAN DEVELOPMENT PROGRAM

SUBCHAPTER 1. URBAN DEVELOPMENT PROGRAM REQUIREMENTS

12A:81-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Urban Development Corporation to implement the Corporation's general urban development financing program.

(b) This program provides for the Corporation to fund specific types of development projects in certain qualified municipalities.

(c) Applications and questions regarding participation in this program should be directed to:

New Jersey Urban Development Corporation  
150 West State Street  
CN 834  
Trenton, New Jersey 08625

12A:81-1.2 Definitions

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

"Board" or "Board of Directors" means the directors of the New Jersey Urban Development Corporation, pursuant to N.J.S.A. 55:19-4.

"Civic project" means a project designed and intended to provide facilities for educational, cultural, health, recreational, community or other civic purposes.

"Corporation" means the New Jersey Urban Development Corporation, established pursuant to N.J.S.A. 55:19-1 et seq.

"Educational institution" means a private college or university, or a State sponsored and supported college or university.

"Eligible project cost" means the cost of developing, executing and making operational a Board-approved project. Eligible project cost includes the cost:

1. Of purchasing, leasing, condemning, or otherwise acquiring land and/or other property, or an interest therein, in the designated project or as necessary for a right-of-way or other easement to or from the project area;
2. Incurred for or in connection with or incidental to acquiring the land, property, or interest;

## ADOPTIONS

3. Incurred for or in connection with the relocation and moving of persons displaced by acquisition;

4. Of development or redevelopment, including:

i. The comprehensive renovation or rehabilitation of the land, property or interest;

ii. The cost of equipment and fixtures, which are part of the real estate, and the cost of production machinery and equipment necessary for the operation of the project; and

iii. The disposition of land or other property for these purposes.

5. Of demolishing, removing, relocating, renovating, altering, constructing, reconstructing, installing or repairing any land or any building, street, highway, alley, utility, service or other structure or improvement;

6. Of acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements necessary to the project;

7. Of planning and/or feasibility studies of proposed projects that are likely to result in UDC applications for financial assistance; and

8. Other incurred or incidental cost approved by the Board.

"Female business" means those female-owned businesses duly approved pursuant to the New Jersey Set-Aside Act for Small Businesses and Female Businesses, Minority Businesses, N.J.S.A. 52:32-17 et seq. (see also N.J.A.C. 12A-10-1).

"Financial assistance" means, but is not limited to, direct loans, loan guarantees, equity investment, and/or stock underwriting purchases provided by the Corporation.

"For-profit corporation" means a corporation, organized and incorporated for the purpose of making a profit and as defined by N.J.S.A. 14A:1-2(g).

"Industrial project" means a project designed to provide facilities for manufacturing, industrial, commercial, wholesale, retail, warehousing or research and development purposes.

"Land use project" means a project for the clearance, replanning, reconstruction, rehabilitation, renewal, redevelopment, conservation, restoration, or improvement of an area, in cooperation or under agreement with a qualified municipality which has designated the area blighted or in need of rehabilitation.

"Minority business" means a minority business duly approved pursuant to the New Jersey Set-Aside Act for Small Businesses, Female Businesses and Minority Businesses, N.J.S.A. 52:32-17 et seq. (see also N.J.A.C. 12A:10-1).

"Multi-purpose project" means a project combining the purposes of two or more project classifications enumerated in this chapter.

"Non-profit corporation" means a corporation organized and incorporated pursuant to N.J.S.A. 15A:1-2.

"Project" means a specific work or improvement including lands, buildings, improvements, real and personal property or any interest therein (including lands under water, riparian rights, space rights, and air rights) acquired, owned, constructed, reconstructed, rehabilitated, or improved by the Corporation, a subsidiary of the Corporation, or by any other person, firm, or corporate entity under agreement with the Corporation or subsidiary of the Corporation pursuant to the provisions of the Urban Development Corporation Act.

"Qualified municipality" means any municipality which, at the time of the initiation of a project, was eligible to receive State aid under P.L. 1977, c. 260, N.J.S.A. 52:27D-162 et seq.; or any other municipality which in any year subsequent to the enactment of P.L. 1978, c. 14, N.J.S.A. 52:27D-178 et seq., was eligible to receive State aid pursuant to that Act; or any municipality which has a population of 15,000 or less, according to the most recent Federal decennial census; a population density of 5,000 or more per square mile; 100 or more children enrolled in the Aid to Families with Dependent Children Program, according to the data available to and utilized by the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs to determine eligibility for State aid under the provisions of P.L. 1978, c. 14; an equalized tax rate which exceeds the State equalized tax rate; and an equalized valuation per capita which is less than the State equalized valuation per capita.

## COMMERCE AND ECONOMIC DEVELOPMENT

"Small business" means a business duly approved pursuant to the New Jersey Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses, N.J.S.A. 52:32-17 et seq. (see also N.J.A.C. 12A:10-1).

"Sponsor" means an educational institution, local government unit, county government unit, economic development group, private-for-profit business, non-profit agency, or the Corporation.

"Subsidiary" means a corporation established by resolution of the Corporation, that has a majority of its outstanding voting shares owned by the Corporation or where the Corporation has the power to designate, and has so designated, a majority of the directors of such corporation.

**"Time of the initiation of the project" means the date and time of physical receipt of a completed application by the Corporation to its designated agent."**

"Utility project" means a project designed and intended to provide facilities for provision of water, sewer, solid-waste disposal, transportation, utility or other public services necessary for the accommodation of a project of another classification undertaken pursuant to this chapter; but accommodation of needs greater than those of the other project may be encompassed.

### 12A:81-1.3 Application for Corporation financial assistance

(a) Each application for financial assistance shall be on forms prescribed by the Corporation and be accompanied by the following:

1. A non-refundable application fee of \$250.00;

2. Evidence of support of the municipality in which the project is located. For purposes of this section, evidence of municipal support shall mean:

i. A certified copy of a resolution of the governing body of the local municipality;

ii. A letter of support from the chief executive of the local municipality; and

iii. Where applicable, a notarized letter from the local planning or zoning board which indicates that the project complies with local zoning requirements or has obtained the necessary variance;

3. A feasibility study of the proposed project;

4. Evidence of private resources or other public sector financing commitments;

5. Evidence of all requisite Federal and/or State environmental permits where necessary for the project; and

6. A Small Business, Female Business, and Minority Business Set-Aside Plan. (See N.J.A.C. 12A:81-1.7).

### 12A:81-1.4 Time for application for financial assistance from the Corporation

A sponsor may apply to the Corporation at any time for financial assistance. However, the Corporation may establish deadlines for receipt and approval of applications, if it is in the best interest of the program.

### 12A:81-1.5 Financial assistance

(a) No more than \$6 million shall be allocated to any one county from all of the Corporation's development programs during the period in which the Corporation is allocating any of the \$30 million provided by Community Development Bond Act, P.L. 1981, c. 486.

(b) The Corporation may provide financial assistance to a project in any of the following manners:

1. Direct loans from the Corporation in the form of permanent mortgage financing for eligible project costs at Corporation designated rates. Terms of direct loans from the Corporation shall not exceed a period of 20 years.

2. Loan guarantees by the Corporation which guarantee Loans for no more than 90 percent of the eligible project cost. Terms of a loan guarantee shall not be for more than 10 years;

3. Equity investments by the Corporation through forming joint ventures with private or public sector entities, by providing venture capital, purchase of stock, or other forms of equity investment as may be offered by the specific project or the sponsor in general; or

4. Grants may be made by the Corporation to projects, when determined by the Board to be necessary and appropriate.

(c) The sponsor shall secure interim financing for all projects, unless the Corporation, by Board resolution, agrees otherwise. The interim lender shall assume full responsibility for monitoring the timely completion of a project.

(d) The minimum amount of financial assistance from the Corporation shall be \$50,000 for development projects, and \$10,000 for feasibility studies.

(e) The sponsor shall certify in writing that it is unable to provide additional funds for the project beyond its stated commitments and that "but for" assistance from the Corporation the project would be economically infeasible and unable to proceed.

12A:81-1.6 Evaluation of applications for financial assistance from the Corporation

(a) The Executive Director and the Corporation's Project Review Committee shall evaluate each application for financial assistance from the Corporation considering the following factors:

1. The distress level of the municipality in which the project is to be located, as well as the immediate area of the project;
2. The ratio of total Corporation financing to permanent jobs created as a result of the financing;
3. The amount of new tax ratables created within the municipality where the project is located;
4. The amount of financing from the project from sources other than the Corporation;
5. The impact the project will have in stimulating investment and development in the municipality and the immediate area in which the project is located;
6. The readiness of the project to proceed and the likely success of the project;
7. The return on the investment made by the Corporation in the project; and
8. The degree of support for, participation in, and/or consultation with the community and municipality in which the project is to be located.

(b) After an evaluation of the project by the Executive Director and the Project Review Committee is completed, the project will be presented to the Board for preliminary approval. The project will then be reviewed again by the Executive Director and Project Review Committee prior to the Board's final decision.

(c) The Corporation shall have 120 days in which to review a request for financial assistance and advise an applicant sponsor that:

1. The request has been approved;
2. The request has been approved contingent on modification;
3. The request has been rejected; or
4. The request is continuing to be considered pending additional information being received.

12A:81-1.7 Small business, female business and minority business set-aside plans and requirements

(a) Each project approved to receive financial assistance from the Corporation shall set-aside no less than 10 percent of the aggregate project construction cost of the project for the purpose of providing contract opportunities for small businesses, female businesses, and minority businesses.

(b) The sponsor of the project shall identify the small businesses, female businesses and minority businesses that will participate, by construction trade, together with the contract sum to be paid to each small business, female business, and minority business.

(c) In determining compliance with these goals, a sponsor may only utilize those small businesses, women businesses, and minority businesses duly approved and registered pursuant to the Set-Aside Act for Small Businesses, Female Businesses and Minority Businesses, N.J.S.A. 52:32-17 et seq. (See N.J.A.C. 12A:10-1).

12A:81-1.8 Reporting and compliance

(a) Upon the receipt of Corporation financial assistance, the project sponsor shall be required to submit an annual report to the Corporation which shall include the following:

1. An annual audit of the sponsor prepared by a certified public accountant;
2. A report on the number of employees working at the project location;

3. Current and 10-year projected budgets of the approved project;
4. Plans for capital investments; and
5. Any other information that the Corporation may require.

12A:81-1.9 Rescission of financial assistance from the Corporation

(a) The Corporation may, at its discretion, rescind all or part of the financial assistance from the Corporation when it has become reasonably evident that:

1. The commitment of financial resources has been withdrawn or amended in such a manner as to undermine the investment by the Corporation;
2. The project is judged no longer capable of repaying the Corporation;
3. The project is judged incapable of achieving its set aside requirement, under N.J.A.C. 12A:81-1.7, or the project is not employing good faith efforts to achieve these requirements; or
4. The sponsor and/or participants in the project are found not to be of good moral character. Lack of good moral character shall include, but is not limited to, convictions of offenses or crimes.

(b) Upon determination by the Corporation that financial assistance from the Corporation shall be rescinded, the Corporation shall send a certified letter to the sponsor informing of the rescission and the right of the sponsor to appeal the decision pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-10, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(a)

**Neighborhood Development Corporation**

**Adopted New Rules: N.J.A.C. 12A:82-1**

Proposed: October 17, 1988 at 20 N.J.R. 2530(a).

Adopted: December 15, 1988 by the New Jersey Urban

Development Corporation, Elizabeth F. Defeis, Chair.

Filed: January 17, 1989 as R.1989 d.90, with a **substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 55:19-6(d).

Effective Date: February 6, 1989.

Expiration Date: February 6, 1994.

**Summary of Public Comments and Agency Response:**

**No comments received.**

The Urban Development Corporation has added upon adoption a reasonable definition of "time of the initiation of the project" for the purpose of clarification of the rules.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***):

CHAPTER 82

NEIGHBORHOOD DEVELOPMENT CORPORATION

SUBCHAPTER 1. NEIGHBORHOOD DEVELOPMENT CORPORATION REQUIREMENTS

12A:82-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Urban Development Corporation to implement the Corporation's Neighborhood Development Corporation Program.

(b) The purpose of the program is to provide technical and/or financial assistance to Neighborhood Development Corporations in certain qualified municipalities.

(c) Applicants and questions regarding participation in this program should be directed to:

New Jersey Urban Development Corporation  
150 West State Street  
CN 834  
Trenton, New Jersey 08625

12A:82-1.2 Definitions

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

## ADOPTIONS

"Board" or "Board of Directors" means the Directors of the New Jersey Urban Development Corporation pursuant to N.J.S.A. 55:19-4.

"Civic project" means a project designed and intended to provide facilities for educational, cultural, health, recreational, community or other civic purposes.

"Corporation" means the New Jersey Urban Development Corporation established pursuant to N.J.S.A. 55:19-1 et seq.

"Eligible project cost" means the cost of developing, executing and making operational a Board-approved neighborhood development corporation project. Eligible project cost includes the cost:

1. Of purchasing, leasing, condemning, or otherwise acquiring land and/or other property, or an interest therein, in the designated project area or as necessary for a right-of-way or other easement to or from the project area;

2. Incurred for or in connection with, or incidental to acquiring the land, property, or interest;

3. Incurred for, or in connection with the relocation and moving of persons displaced by acquisition;

4. Of development or redevelopment, including:

- i. The comprehensive renovation or rehabilitation of the land, property or interest;

- ii. The cost of equipment and fixtures, which are part of the real estate, and the cost of production machinery and equipment necessary for the operation of the project; and

- iii. The disposition of land or other property for these purposes.

5. Of demolishing, removing, relocating, renovating, altering, constructing, reconstructing, installing or repairing any land or any building, street, highway, alley, utility, service or other structure or improvement;

6. Of acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements necessary to the project;

7. Of planning and/or feasibility studies of proposed projects that are likely to result in UDC applications for financial assistance; and

8. Other incurred or incidental cost approved by the Board.

"Female business" means those female businesses duly approved pursuant to the New Jersey Set Aside Act for Small Businesses, Female Businesses, Minority Businesses, N.J.S.A. 52:32-17 et seq. (see also N.J.A.C. 12A:10-1).

"Financial assistance" means, but is not limited to, direct loans, loan guarantees, equity investment, and/or stock underwriting purchases provided by the Corporation.

"For-profit corporation" means a corporation, organized and incorporated for the purpose of making a profit and as defined by N.J.S.A. 14A:1-2(g).

"Industrial project" means a project designed to provide facilities for manufacturing, industrial, commercial, wholesale, retail, warehousing or research and development purposes.

"Land use project" means a project for the clearance, replanning, reconstruction, rehabilitation, renewal, redevelopment, conservation, restoration, or improvement of an area, in cooperation or under agreement with a qualified municipality which has designated the area blighted or in need of rehabilitation.

"Minority business" means a minority business duly approved pursuant to the New Jersey Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses, N.J.S.A. 52:32-17 et seq. (see also N.J.A.C. 12A:10-1).

"Multi-purpose project" means a project combining the purposes of two or more project classifications enumerated in this subchapter.

"Neighborhood" means an area designated within a qualified municipality and approved by the Board.

"Neighborhood development corporation" or "NDC" means a corporation formed for the sole purpose of owning, supervising, and managing a specific Board-approved project within the designated neighborhood area.

"Non-profit corporation" means a corporation organized and incorporated pursuant to N.J.S.A. 15A:1-2.

"Project" means a specific work or improvement including lands, buildings, improvements, real and personal property or any interest therein (including lands under water, riparian rights, space rights, and

## COMMERCE AND ECONOMIC DEVELOPMENT

air rights) acquired, owned, constructed, reconstructed, rehabilitated or improved by the Corporation, a subsidiary of the Corporation, or by any person, firm, or corporate entity under agreement with the Corporation or subsidiary of the Corporation pursuant to the provisions of the Urban Development Corporation Act.

"Qualified municipality" means any municipality which, at the time of the initiation of the project was eligible to receive State aid under P.L. 1977, ch. 260 (N.J.S.A. 52:27D-162 et seq.); or any other municipality which in any year subsequent to the enactment of P.L. 1978, ch. 14 (N.J.S.A. 52:27D-178 et seq.) was eligible to receive State aid pursuant to that Act; or any municipality which has a population density of 5,000 or more per square mile; 100 or more children enrolled in the Aid to Family with Dependent Children Program according to the data available to and utilized by the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs to determine eligibility for State aid and under the provisions of P.L. 1978, ch. 14, an equalized tax rate which exceeds the State tax rate; and an equalized valuation per capita which is less than the State equalized valuation per capita.

"Small business" means a business duly approved pursuant to the New Jersey Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses, N.J.S.A. 52:32-17 et seq. (see also N.J.A.C. 12A:10-1).

"Subsidiary" means a corporation established by resolution of the Corporation, that has a majority of its outstanding voting shares owned by the Corporation or where the Corporation has the power to designate, and has so designated, a majority of the directors of such corporation.

"Technical assistance" means, but shall not be limited to, organizational development, incorporation, project feasibility, development and project administration.

**"Time of the initiation of the project" means the date and time of physical receipt of a completed application by the Corporation to its designated agent."\***

"Utility project" means a project designed and intended to provide facilities for provision of water, sewer, solid-waste disposal, transportation, utility or other public services necessary for the accommodation of a project of another classification undertaken pursuant to this subchapter, but accommodation of needs greater than those of the other project may be encompassed.

### 12A:82-1.3 Application for Corporation financial assistance

(a) Each application for financial assistance shall be on forms prescribed by the Corporation and be accompanied by the following:

1. A non-refundable application fee of \$250.00;
2. Evidence of support of the municipality in which the project is located. For purposes of this section, evidence of municipal support shall mean the following:
  - i. A certified copy of a resolution of the governing board of the local municipality;
  - ii. A letter of support from the chief executive of the local municipality; and
  - iii. Where applicable, a notarized letter from the local planning or zoning board which indicates that the project complies with local zoning requirements or has obtained the necessary variance.
3. A feasibility study of the proposed project;
4. Evidence of private resources and other public sector financing commitments;
5. Evidence of all required Federal and/or State environmental permits where necessary for the project;
6. A Small Business, Female Business, and Minority Business Set-Aside Plan (See N.J.A.C. 12A:82-1.7);
7. A copy of the NDC's bylaws and certification of incorporation;
8. A listing of all the principals in the NDC, which shall include: names, addresses, social security numbers, dates of birth, and resumes. For purposes of this section, principal shall mean any officer, director, or individual who directly or indirectly holds any beneficial ownership of the securities or property of the NDC. It shall also mean any employee of the NDC who is empowered by title or by explicit assignment to authorize the procurement, purchase, or contracting of equipment, goods, services or supplies involving an expenditure of \$1,000 or greater for NDC use; and

9. A listing of stockholders' who own two and one-half percent or more of issued shares. The stockholders listing shall disclose the names, addresses, social security numbers, dates of birth, class of stock owned, approximate voting power of stock owned, and number of shares owned.

12A:82-1.4 Time for application for financial assistance from the Corporation

An NDC may apply to the Corporation at any time for financial assistance. However, the Corporation may establish receipt deadlines and approval dates.

12A:82-1.5 Financial assistance

(a) No more than \$6 million shall be allocated to any one county from all of the Corporation's development programs during the period in which the Corporation is allocating any of the \$30 million provided by the Community Development Bond Act, P.L. 1981, c. 486.

(b) The Corporation may provide financial assistance to an NDC in any following manners:

1. Direct loans from the Corporation in the form of permanent mortgage financing for eligible project cost at Corporation designated rates. The term of repayment of direct loans shall not exceed a period of 20 years.

2. Equity investments by the Corporation in the NDC through the purchase of stock of the NDC, and other methods of equity investment.

3. Grants may be made by the Corporation to projects, when determined by the Board to be necessary and appropriate.

(c) The applicant must secure interim financing on all projects, unless the Corporation by Board resolution, agrees otherwise. The interim lender shall assume full responsibility for monitoring the timely completion of a project.

(d) The minimum amount of financial assistance from the Corporation shall be \$50,000 for development projects, and \$10,000 for feasibility studies.

(e) The applicant shall certify in writing that it is unable to provide additional funds in the project beyond its stated commitments and that "but for" the assistance from the Corporation the project would be economically infeasible and unable to proceed.

12A:82-1.6 Evaluation of applications for financial assistance from the Corporation

(a) The Executive Director and the Corporation's Project Review Committee shall evaluate each application for financial assistance from the Corporation considering the following factors:

1. The distress level of the municipality in which the project is to be located, as well as the immediate area of the project;

2. The ratio of total Corporation financing to permanent jobs produced as a result of the financing;

3. The amount of new tax ratables created with the municipality where the project is located;

4. The amount of financing from the project from sources other than the Corporation;

5. The impact the project will have in stimulating investment and development in the municipality and the immediate area in which the project is located;

6. The readiness of the project to proceed and the likely success of the project;

7. The return on the investment made by the Corporation in the project;

8. The degree of support for, participation in, and/or consultation with the community and municipality in which the project is to be located;

9. Whether the ownership of the NDC is broad and representation of the neighborhood in which the project is to be located; and

10. The amount of technical assistance that will be needed by NDC from the Corporation.

(b) After the evaluation of projects by the Executive Director and the Project Review Committee is completed, the project will be presented to the Board for preliminary approval. The project will be reviewed again by the Executive Director and Project Review Committee prior to the Board's final decision.

(c) The Corporation shall have 120 days in which to review a request for financial assistance and advise an applicant sponsor that:

1. The request has been approved;

2. The request has been approved contingent on modification;

3. The request has been rejected; or

4. The request is continuing to be considered pending additional information being received.

12A:82-1.7 Small business, female business and minority business set-aside plans and requirements

(a) Each NDC project approved to receive financial assistance from the Corporation shall set-aside no less than 10 percent of the aggregate project construction cost of the project for the purpose of providing contract opportunities for small businesses, female businesses, and minority businesses.

(b) The NDC shall identify the small businesses, female businesses and minority businesses that will participate, by construction trade, together with the contract sum to be paid to each small business, female business, and minority business.

(c) In determining compliance with these goals, an NDC may only utilize those small businesses, female businesses and minority businesses duly approved and registered pursuant to the Set-Aside Act for Small Businesses, Female Businesses and Minority Businesses, N.J.S.A. 52:32-17 et seq. (See N.J.A.C. 12A:10-1).

12A:82-1.8 Reporting and compliance

(a) Upon the receipt of Corporation financial assistance, the NDC shall be required to submit an annual report to the Corporation which shall include the following:

1. An annual audit of the Neighborhood Development Corporation by a certified public accountant;

2. A report on the number of employees working at the project location;

3. Current and 10-year projected budgets of the approved project;

4. Plans for capital investments; and

5. Any other information that the Corporation may require.

12A:82-1.9 Rescission of financial assistance from the Corporation

(a) The Corporation may at its discretion rescind part or all of the financial assistance from the Corporation when it has become reasonably evident that:

1. The commitment of financial resources has been withdrawn or amended in such a manner as to undermine the investment by the Corporation;

2. The project is judged no longer capable of repaying the Corporation;

3. The project is judged incapable of achieving its set aside requirement, under N.J.A.C. 12A:82-1.7, or that the project is not employing good faith efforts to achieve these requirements;

4. The sponsors and/or participants in the project are found not to be of good moral character. Lack of good moral character shall include, but is not limited to, convictions of offenses or crimes;

5. That any one individual, without prior Board approval, has directly or indirectly purchased, obtained or otherwise acquired more than 10 percent ownership of NDC issued stock;

6. That any one individual, without prior Board approval, has directly or indirectly acquired more than 15 percent voting control of the NDC; or

7. That any one family, without prior Board approval, has directly or indirectly purchased, obtained or otherwise acquired more than 30 percent ownership of NDC issued stock. For purposes of this section, family shall be defined as relatives of husband-wife, father, mother, brother, and sister whether or not residing in the same household.

(b) Upon determination by the Corporation that financial assistance from the Corporation shall be rescinded, the Corporation shall send a certified letter to the sponsor informing of the rescission and the right of the sponsor to appeal the decision pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-10 and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

## TRANSPORTATION

### LOCAL AID

#### (a)

#### State Aid to Counties and Municipalities Standards; Contracts

##### Adopted Amendments: N.J.A.C. 16:21-1.2 and 3.1

Proposed: December 5, 1988 at 20 N.J.R. 2999(a).

Adopted: January 5, 1989 by Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.

Filed: January 6, 1989 as R.1989 d.71, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:8-1 to 9.

Effective Date: February 6, 1989.

Expiration Date: September 3, 1990.

#### Summary of Public Comments and Agency Responses:

**No comments received.**

**Full text** of the adoption follows.

#### 16:21-1.2 Standards

(a) The proposed road and bridge improvement projects shall conform to the design criteria of the appropriate American Association of State Highway and Transportation Officials publication listed below:

1. (No change.)
2. A Policy on Geometric Design of Highways and Streets;
3. (No change in text.)

NOTE: Any exceptions to the above design criteria must be justified by the local engineer to be in the public interest.

(b) All workmanship and materials shall conform with the current New Jersey State Department of Transportation Standard specifications for Road and Bridge Construction.

#### 16:21-3.1 Award of contract

(a) (No change.)

(b) Fifteen calendar days prior to the time of advertisement for construction bids, the local government shall submit the following to the Local Aid District Office:

1. Two copies of the contract plans and specifications; and
2. Two copies of the engineer's estimate of costs.

(c) Within 30 calendar days following the receipt of construction bids, the local government shall submit the following to the district office of the Bureau of Local Aid:

1. Renummer existing 3. and 4. as 1. and 2. (No change in text.)
- (d) (No change in text.)

#### (b)

#### New Jersey Bridge Rehabilitation and Improvement Fund: State Aid to Counties and Municipalities Standards; Contracts

##### Adopted Amendments: N.J.A.C. 16:21A-1.3 and 3.1

Proposed: December 5, 1988 at 20 N.J.R. 3000(a).

Adopted: January 5, 1989 by Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.

Filed: January 6, 1989 as R.1989 d.70, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13, 7-47, 13-1 et seq., and the New Jersey Bridge Rehabilitation and Improvement Bond Act of 1983, P.L. 1983 c.363.

Effective Date: February 6, 1989.

Expiration Date: August 20, 1989.

#### Summary of Public Comments and Agency Responses:

**No comments received.**

**Full text** of the adoption follows.

#### 16:21A-1.3 Standards

(a) The proposed bridge improvement projects shall conform to the design criteria of the appropriate American Association of State Highway and Transportation Officials publication listed below. Any exceptions to these design criteria must be justified by the local engineer to be in the public interest.

1. (No change.)
  2. A Policy on Geometric Design of Highways and Streets;
  3. Standard Specifications for Highway Bridges.
- (b) (No change.)

#### 16:21A-3.1 Award of contract

(a) (No change.)

(b) Fifteen calendar days prior to the time of advertisement for construction bids, the local government shall submit the following to the Local Aid district office:

1. Two copies of contract plans and specifications; and
2. Two copies of the engineer's estimate of costs;

(c) Within 30 calendar days following the receipt of construction bids, the local government shall submit the following to the Local Aid district office:

1. Two copies of the summary of construction bids;
2. A resolution awarding the contract to the lowest responsible bidder, subject to the approval of the Department.

(d) When all information relative to the bidding has been approved by the State, the local government shall be advised of the approval of the award of contract.

#### (c)

#### Urban Revitalization Special Demonstration and Emergency Project Regulations

##### Adopted Amendments: N.J.A.C. 16:22-1.3 and 3.1

Proposed: December 5, 1988 at 20 N.J.R. 3000(b).

Adopted: January 5, 1989 by Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.

Filed: January 6, 1989 as R.1989 d.69, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:8-1 to 9.

Effective Date: February 6, 1989.

Expiration Date: February 3, 1991.

#### Summary of Public Comments and Agency Responses:

**No comments received.**

**Full text** of the adoption follows.

#### 16:22-1.3 Standards

(a) The proposed road and bridge improvement projects shall conform to the design criteria of the appropriate American Association of State Highway and Transportation Officials publications listed below. Any exceptions must be justified by the local engineer to be in the public interest:

1. (No change.)
2. A Policy on Geometric Design of Highways and Streets;
3. Standard specifications for Highway Bridges.

(b) All workmanship and materials shall conform with the current New Jersey State Department of Transportation standard specifications for road and bridge construction.

#### 16:22-3.1 Award of contract

(a) (No change.)

(b) Fifteen calendar days prior to the time of advertisement of construction bids, the local government shall submit the following to the district office of the Bureau of Local Aid:

1. Two copies of the contract plans and specifications; and
2. Two copies of the engineer's estimate of costs.

(c) Within 30 calendar days following the receipt of construction bids, the local government shall submit the following to the district office of the Bureau of Local Aid:

1. Renummer existing 3. and 4. as 1. and 2. (No change in text.)
- (d) (No change in text.)

**TRANSPORTATION OPERATIONS****(a)****RESTRICTED PARKING AND STOPPING****Routes N.J. 29 in Hunterdon County****Adopted Amendment: N.J.A.C. 16:28A-1.20**

Proposed: December 5, 1988 at 20 N.J.R. 3001(a).

Adopted: January 5, 1989 by John F. Dunn, Jr., Director,  
Division of Traffic Engineering and Local Aid.

Filed: January 11, 1989 as R.1989 d.76, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-139.

Effective Date: February 6, 1989.

Expiration Date: June 1, 1993.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the adoption follows.

16:28A-1.20 Route 29

(a) (No change.)

(b) The certain parts of State highway Route 29 (Main Street) described in this subsection shall be designated and established as "no parking" zones for cleaning purposes during certain designated days and hours except as provided in N.J.S.A. 39:4-139.

1. No parking 8:00 A.M.-9:00 A.M. Wednesday, along both sides between Mt. Hope Street and Cherry Lane in the City of Lambertville, Hunterdon County.

(c) (No change.)

(d) The certain parts of State highway Route 29 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. Two hours time limit parking along both sides in the City of Lambertville, Hunterdon County, Monday through Saturday, 10:00 A.M. to 6:00 P.M., and Sunday, 1:00 P.M.-5:00 P.M. from Church Street to York Street.

**(b)****RESTRICTED PARKING AND STOPPING****Routes U.S. 30 and N.J. 168 in Camden County; N.J. 179 in Hunterdon County; and N.J. 93 in Bergen County****Adopted Amendments: N.J.A.C. 16:28A-1.21, 1.51, 1.53, and 1.68**

Proposed: December 5, 1988 at 20 N.J.R. 3001(b).

Adopted: January 5, 1989 by John F. Dunn, Jr., Director,  
Division of Traffic Engineering and Local Aid.

Filed: January 11, 1989 as R.1989 d.75, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 4-139 and 4-199.

Effective Date: February 6, 1989.

Expiration Date: June 1, 1993.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the adoption follows.

16:28A-1.21 Route U.S. 30

(a) (No change.)

(b) The certain parts of State highway Route U.S. 30 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.-11. (No change.)

12. Along the (White Horse Pike) in Chesilhurst Borough, Camden County:

i. On the southbound (westerly) side:

1. Near side bus stop:

(A) Cleveland Avenue—Beginning at the southerly curb line of Cleveland Avenue and extending 105 feet therefrom.

ii. On the eastbound (southerly) side:

(1) Far side bus stop:

(A) Freeman Avenue—Beginning at the easterly curb line of Freeman Avenue and extending 146 feet easterly therefrom.

(2) Near side bus stops:

(A) Sherman Avenue—Beginning at the westerly curb line of Sherman Avenue and extending 105 feet westerly therefrom.

(B) Center Avenue—Beginning at the westerly curb line of Center Avenue and extending 105 feet westerly therefrom.

13. Along the (White Horse Pike) in Chesilhurst Borough, Camden County:

i. On the northbound (easterly) side:

(1) Near side bus stop:

(A) Cleveland Avenue—Beginning at the southerly curb line of Cleveland Avenue and extending 150 feet therefrom.

ii. On the westbound (northerly) side:

(1) Near side bus stop:

(A) Sherman Avenue—Beginning at the easterly curb line of Sherman Avenue and extending 105 feet easterly therefrom.

(2) Far side bus stop:

(A) Freeman Avenue—Beginning at the westerly curb line of Freeman Avenue and extending 100 feet westerly therefrom.

14.-22. (No change.)

23.-24. (Reserved) (See PRN 1988-544, November 21, 1988 New Jersey Register.)

25. Along the (White Horse Pike) in the Borough of Haddon Heights, Camden County:

i. On the eastbound (southerly) side:

(1) Near side bus stop:

(A) Haddon Avenue—Beginning at the westerly curb line of Haddon Avenue and extending 105 feet westerly therefrom.

(2) Far side bus stops:

(A) Garden Street—Beginning at the easterly curb line of Garden Street and extending 100 feet easterly therefrom.

(B) Station Avenue—Beginning at the easterly curb line of Station Avenue and extending 100 feet easterly therefrom.

(C) Green Street—Beginning at the easterly curb line of Green Street and extending 100 feet easterly therefrom.

ii. On the westbound (northerly) side:

(1) Far side bus stops:

(A) Kings Highway—Beginning at the westerly curb line of Kings Highway and extending 100 feet westerly therefrom.

(B) Station Avenue—Beginning at the westerly curb line of Station Avenue and extending 100 feet westerly therefrom.

(2) Near side bus stops:

(A) Garden Street—Beginning at the easterly curb line of Garden Street and extending 105 feet easterly therefrom.

(B) Grove Street—Beginning at the easterly curb line of Grove Street and extending 105 feet easterly therefrom.

26. In the Borough of Clementon, Camden County:

i. Along the westbound (northerly) side:

(1) Near side bus stops:

(A) New Freedom Road—Beginning at the easterly curb line of New Freedom Road and extending 105 feet easterly therefrom.

(B) Franklin Avenue—Beginning at the easterly curb line of Franklin Avenue and extending 105 feet easterly therefrom.

(C) Gibbsboro Road—Beginning at the easterly curb line of Gibbsboro Road and extending 105 feet easterly therefrom.

ii. Along the eastbound (southerly) side:

(1) Near side bus stops:

(A) Gibbsboro Road—Beginning at the westerly curb line of Gibbsboro Road and extending 120 feet westerly therefrom.

(B) Washington Avenue—Beginning at the westerly curb line of Washington Avenue and extending 105 feet westerly therefrom.

**ADOPTIONS**

(C) New Freedom Road—Beginning at the westerly curb line of New Freedom Road and extending 105 feet westerly therefrom.

**16:28A-1.51 Route 168**

(a) (No change.)

(b) The certain parts of State highway Route 168 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 (Black Horse Pike) on the northbound (easterly) side in Haddon Heights Borough, Camden County:

i. Far side bus stop:

(1) West High Street—Beginning at the northerly curb line of West High Street and extending 100 feet northerly therefrom.

ii. Near side bus stops:

(1) Prospect Ridge Blvd.—Beginning 25 feet south of the southerly curb line of Prospect Ridge Blvd. and extending 120 feet southerly therefrom;

(2) Brynmawr Avenue—Beginning at the southerly curb line of Brynmawr Avenue and extending 105 feet southerly therefrom;

(3) Narbeth Avenue—Beginning at the southerly curb line of Narbeth Avenue and extending 105 feet southerly therefrom.

(4) New Jersey Avenue—Beginning at the southerly curb line of New Jersey Avenue and extending 105 feet southerly therefrom.

**16:28A-1.53 Route 179**

(a) (No change.)

(b) The certain parts of State highway Route 179 (Bridge Street) in Lambertville, Hunterdon County, described in this subsection shall be designated and established as "no parking" zones for cleaning purposes during certain designated days and hours except as provided in N.J.S.A. 39:4-139.

1. No parking, 8:00 A.M.—9:00 A.M.—Thursday, along the north side between Route 29 (Main Street) and Lambert Lane.

2. No parking, 8:00 A.M.—9:00 A.M.—Friday, along the south side between Route 29 (Main Street) and Lambert Lane.

**16:28A-1.68 Route 93**

(a) The certain parts of State highway Route 93 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 (Grand Avenue), southbound on the westerly side in the Borough of Leonia, Bergen County:

i. Far side bus stops:

(1) Lakeview Avenue—Beginning at the southerly curb line of Lakeview Avenue and extending 100 feet southerly therefrom;

(2) Ray Avenue—Beginning at the southerly curb line of Ray Avenue and extending 100 feet southerly therefrom;

(3) Hillside Avenue—Beginning at the prolongation of the southerly curb line of Hillside Avenue and extending 100 feet southerly therefrom;

(4) Schor Avenue—Beginning at the southerly curb line of Schor Avenue and extending 100 feet southerly therefrom;

(5) Fort Lee Road—Beginning at the southerly curb line of Fort Lee Road and extending 100 feet southerly therefrom;

(6) Prospect Street—Beginning at the southerly curb line of Prospect Street and extending 100 feet southerly therefrom;

(7) Highwood Avenue—Beginning at the prolongation of the southerly curb line of Highwood Avenue and extending 100 feet southerly therefrom;

(8) Ames Avenue—Beginning at the prolongation of the southerly curb line of Ames Avenue and extending 100 feet southerly therefrom;

(9) Oakdene Avenue—Beginning at the prolongation of the southerly curb line of Oakdene Avenue and extending 100 feet southerly therefrom.

ii. Near side bus stops:

**TRANSPORTATION**

(1) Christie Heights Street—Beginning at the prolongation of the northerly curb line of Christie Heights Street and extending 105 feet northerly therefrom;

(2) Station Parkway—Beginning at the northerly curb line of Station Parkway and extending 105 feet northerly therefrom;

2. Along (Grand Avenue), northbound on the easterly side in the Borough of Leonia, Bergen County:

i. Near side bus stops:

(1) Ames Avenue—Beginning at the southerly curb line of Ames Avenue and extending 105 feet northerly therefrom;

(2) Christie Street—Beginning at the southerly curb line of Christie Street and extending 105 feet southerly therefrom;

(3) Schor Avenue—Beginning at the prolongation of the southerly curb line of Schor Avenue and extending 105 feet southerly therefrom;

(4) Christie Heights Street—Beginning at the southerly curb line of Christie Heights Street and extending 105 feet southerly therefrom;

(5) Fort Lee Road—Beginning at the southerly curb line of Fort Lee Road and extending 105 feet southerly therefrom.

ii. Far side bus stops:

(1) Highwood Avenue—Beginning at the northerly curb line of Highwood Avenue and extending 100 feet northerly therefrom;

(2) Prospect Street—Beginning at the northerly curb line of Prospect Street and extending 100 feet northerly therefrom;

(3) Fort Lee Road—Beginning at the northerly curb line of Fort Lee Road and extending 100 feet northerly therefrom;

(4) Vreeland Avenue—Beginning at the northerly curb line of Vreeland Avenue and extending 100 feet northerly therefrom;

(5) Overlook Avenue—Beginning at the northerly curb line of Overlook Avenue and extending 100 feet northerly therefrom;

(6) Lakeview Avenue—Beginning at the northerly curb line of Lakeview Avenue and extending 100 feet northerly therefrom.

3. Along (Grand Avenue) southbound on the westerly side in the Borough of Palisades Park, Bergen County:

i.-ii. (No change.)

4.-6. (No change.)

(b) (No change.)

**CONSTRUCTION AND MAINTENANCE**

**(a)**

**Contract Administration**

**Classification of Prospective Bidders**

**Adopted Amendment: N.J.A.C. 16:44-1.2**

Proposed: December 5, 1988 at 20 N.J.R. 3004(a).

Adopted: January 5, 1989 by Robert A. Innocenzi, Deputy

Commissioner, Department of Transportation

Filed: January 13, 1989 as R.1989, d.88, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:2-1, 14A-1 and 14:15-2.

Effective Date: February 6, 1989.

Expiration Date: May 25, 1993.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the adoption follows.

**16:44-1.2 Classification of prospective bidders**

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

(d) Rating ranges as to the amount of work:

Ratings less than ranges listed = actual rating in thousands.

\$ 50,001 to	\$ 100,000	750,001 to	1,000,000
100,001 to	150,000	1,000,001 to	2,000,000
150,001 to	200,000	2,000,001 to	3,000,000
200,001 to	300,000	3,000,001 to	4,000,000
300,001 to	400,000	4,000,001 to	6,000,000
400,001 to	500,000	6,000,001 to	8,000,000
500,001 to	750,000	8,000,001 to	10,000,000

**TRANSPORTATION**

10,000,001 to 15,000,000	60,000,001 to 65,000,000
15,000,001 to 20,000,000	65,000,001 to 70,000,000
20,000,001 to 25,000,000	70,000,001 to 75,000,000
25,000,001 to 30,000,000	75,000,001 to 80,000,000
30,000,001 to 35,000,000	80,000,001 to 85,000,000
35,000,001 to 40,000,000	85,000,001 to 90,000,000
40,000,001 to 45,000,000	90,000,001 to 95,000,000
45,000,001 to 50,000,000	95,000,001 to 99,999,999
50,000,001 to 55,000,000	over \$99,999,999
55,000,001 to 60,000,000	

1. Unlimited rating involves work in excess of \$99,999,999. A prospective bidder, so rated, will be notified of the intention of the New Jersey Department of Transportation to undertake a project in the "Unlimited" range, and such prospective bidder shall be required to specifically prequalify to bid upon the work in question by applying for such specific classification at least 20 days before the date set for the receiving of bids.

2. A prospective bidder, whose statements do not qualify him or her to bid in an amount that will be sufficient to place him or her in an established rating range will be graded and rated according to his or her actual ability to undertake a project as shown by his or her statements.

(e)-(m) (No change.)

(n) In order that the Commissioner of Transportation may have the necessary information to pass upon the ability of a bidder to satisfactorily complete a project, each bidder must submit with his or her bid on each proposal a revised financial statement, a statement that the affirmative action program for equal employment opportunity specified in (e)6 above is being continued by the bidder and will be in use for the duration of the project being bid upon and other pertinent data under oath in response to a questionnaire provided by the Commissioner. Revised statements submitted with bids received between the 1st and 15th of the month, by contractors holding classification up to and including \$1,000,001 to \$2,000,000 must be as of the close of business at the end of the second month preceding that during which bids are being received. Revised statements submitted with bids received between the 16th and the end of the month by contractors holding classifications up to and including \$1,000,001 to \$2,000,000 must be as of the close of business at the end of the month immediately preceding that during which bids are being received. In the instance of contractors holding \$2,000,001 through \$99,999,999 classifications, the submission of an affidavit that there has been no material change in financial condition since the date of submission for classification will be permitted if the proper affidavits are completed and accompanied by the Status of Contracts on Hand as of the date of the financial information specified in the Notice to Contractors.

(o)-(q) (No change.)

**(a)**

**OFFICE OF REGULATORY AFFAIRS**

**Zone of Rate Freedom**

**Adopted Amendments: N.J.A.C. 16:53D**

Proposed: September 19, 1988 at 20 N.J.R. 2374(b).  
 Adopted: December 15, 1988 by Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.  
 Filed: December 28, 1988 as R.1989 d.56, **without change**.  
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:2-21 and N.J.S.A. 48:4-2 through 2.25.  
 Effective Date: February 6, 1989.  
 Expiration Date: May 7, 1989.

**Summary of Public Comments and Agency Responses:**  
**No comments received**, either written or at the October 6, 1988 public hearing at the Office of Administrative Law, Newark.

Full text of the adoption follows.

**ADOPTIONS**

16:53D-1.1 General provisions

(a) Any regular route autobus carrier operating within the State which seeks to revise its rates, fares or charges in effect as of the time of the promulgation of this regulation shall not be required to conform with N.J.A.C. 16:51-3.10 (Tariff filings or petitions which do not propose increases in charges to customers) or N.J.A.C. 16:51-3.11 (Tariff filings or petitions which propose increases in charges to customers) provided the increase or decrease in the rate, fare or charge, or the aggregate of increases and decreases in any single rate, fare or charge is not more than the maximum percentage increase or decrease as promulgated below upgraded to the nearest \$.05.

1. The following chart sets forth the 1989 percentage maximum for increases to particular rates, fares or charges and the resultant amount as upgraded \$.05:

Present Fare	% Of Increase	Increase Upgraded To Nearest \$.05
\$ .55-.60	7%	\$.05
\$ .65-.75	7%	\$.05
\$ .80-\$1.00	7%	\$.10
\$1.05 upward	7%	\$.10+

2. The following chart sets forth the 1989 percentage maximum for decrease to particular rates, fares or charges and the resultant amount as upgraded to the nearest \$.05:

Present Fare	% Of Decrease	Decrease Upgraded To Nearest \$.05
\$ .55-.60	10%	\$.10
\$ .65-.75	10%	\$.10
\$ .80-\$1.00	10%	\$.10
\$1.05 upward	10%	\$.15+

16:53D-1.2 Requirements

(a) Any regular route autobus carrier which seeks a fare adjustment which is subject to this rule shall be required to:

1. Notify the Department by filing a complete schedule of all current fares and all fares to be adjusted at least 30 days prior to the effective date of the new fare adjustment.

2. Post a public notice in all autobuses providing service on the regular routes to be affected by the adjusted fares and in all bus terminals served by those autobuses on the regular routes at least 30 days prior to effective date of the new fare adjustment. The autobus carrier must verify to the Department by an affidavit that it has in fact posted such public notice at least 30 days prior to the effective date of the new fare adjustment.

16:53D-1.3 Exemptions

The Commissioner hereby exempts casino or regular route in the nature of special, charter and special autobus operations from the rate regulation set forth in N.J.A.C. 16:53D-1.1 and in any other chapter of Title 48. Notwithstanding the exemption, casino or regular route in the nature of special, charter and special autobus operations shall continue to file with the Department current schedules of their rates, fares or charges.

**(b)**

**NEW JERSEY TRANSIT CORPORATION**

**Private Carrier Capital Improvement Program**

**Adopted New Rules: N.J.A.C. 16:76**

Proposed: November 7, 1988 at 20 N.J.R. 2638(b).  
 Adopted: January 10, 1989 by New Jersey Transit Corporation, Jerome C. Premo, Executive Director.  
 Filed: January 10, 1989 as R.1989 d.73, **without change**.  
 Authority: N.J.S.A. 27:25-5(e), 5(h), 5(k).  
 Effective Date: February 6, 1989.  
 Expiration Date: February 6, 1994.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

As the readoption of this chapter was not filed with the Office of Administrative Law prior to the chapter's expiration, these rules proposed for readoption are adopted as new rules, pursuant to N.J.A.C. 1:30-4.4(f).

Full text of the adopted new rules may be found in the New Jersey Administrative Code at N.J.A.C. 16:76.

**TREASURY-TAXATION**

**DIVISION OF TAXATION**

**(a)**

**Unfair Cigarette Sales Act**

**Drop Shipments; Prepackaging**

**Adopted Amendment: N.J.A.C. 18:6-7.13**

Proposed: September 6, 1988 at 20 N.J.R. 2192(b).

Adopted: January 6, 1989 by John R. Baldwin, Director, Division of Taxation.

Filed: January 13, 1989 as R.1989 d.84, **without change.**

Authority: N.J.S.A. 54:50-1 and 56:7-31.

Effective Date: February 6, 1989.

Expiration Date: April 2, 1989.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the adoption follows.

**18:6-7.13 Drop shipments; prepackaging**

(a) All wholesale dealers licensed pursuant to the New Jersey Cigarette Tax Act, may not have cigarettes intended for sale or delivery to retail accounts, drop shipped by the supplier.

(b) A wholesale dealer may not acquire cigarettes prepackaged for a retail account by a supplier when such prepackaging results in a price rebate or concession from the supplier.

(c) Wholesale dealers must acquire cigarettes in their own storage facilities and do all billing necessary to the final transfer of the cigarettes to their retail accounts.

(d) The drop shipping or prepackaging of any cigarettes by the supplier, contrary to the provisions of (a), (b) and (c) above, for a wholesale dealer's retail accounts is prohibited, and considered a violation of the New Jersey Unfair Cigarette Sales Act.

**(b)**

**Transfer Inheritance Tax and Estate Tax**

**Adopted New Rules: N.J.A.C. 18:26-6.1 and 8.1**

**Adopted Repeals and New Rules: N.J.A.C. 18:26-6.2 and Appendix A**

**Adopted Amendments: N.J.A.C. 18:26-2.5, 2.7, 5.9, 5.17, 5.19, 6.3, 7.10, 8.6, 8.7, 8.12, 9.4, 9.10 and 12.2**

Proposed: September 6, 1988 at 20 N.J.R. 2193(a).

Adopted: January 6, 1989 by John R. Baldwin, Director, Division of Taxation.

Filed: January 13, 1989 as R.1989 d.85, **without change.**

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

Effective Date: February 6, 1989.

Expiration Date: June 7, 1993.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the adoption follows.

**18:26-2.5 Rates for Class "A" transferee**

(a) (No change.)

(b) Transfers to Class "A" transferees where the decedent dies on or after July 1, 1978 through June 30, 1985, except as provided in (c) below, are taxed at the following rates:

1. (No change.)

(c) Transfers to a spouse are totally exempt where the decedent dies on or after January 1, 1985.

(d) Transfers to Class "A" transferees, other than a spouse, where the decedent dies on or after July 1, 1985 through June 30, 1986, are taxed at the following rates:

1. On any amount in excess of—

\$ 50,000 up to 100,000 .....	3%
100,000 up to 150,000 .....	4%
150,000 up to 200,000 .....	5%
200,000 up to 300,000 .....	6%
300,000 up to 500,000 .....	7%
500,000 up to 700,000 .....	8%
700,000 up to 900,000 .....	9%
900,000 up to 1,100,000 .....	10%
1,100,000 up to 1,400,000 .....	11%
1,400,000 up to 1,700,000 .....	12%
1,700,000 up to 2,200,000 .....	13%
2,200,000 up to 2,700,000 .....	14%
2,700,000 up to 3,200,000 .....	15%
3,200,000 .....	16%

(e) Transfers to Class "A" transferees, other than a spouse, where the decedent dies on or after July 1, 1986 through June 30, 1987, are taxed at the following rates:

1. On any amount in excess of—

\$ 150,000 up to 200,000 .....	5%
200,000 up to 300,000 .....	6%
300,000 up to 500,000 .....	7%
500,000 up to 700,000 .....	8%
700,000 up to 900,000 .....	9%
900,000 up to 1,100,000 .....	10%
1,100,000 up to 1,400,000 .....	11%
1,400,000 up to 1,700,000 .....	12%
1,700,000 up to 2,200,000 .....	13%
2,200,000 up to 2,700,000 .....	14%
2,700,000 up to 3,200,000 .....	15%
3,200,000 .....	16%

(f) Transfers to Class "A" transferees, other than a spouse, where the decedent dies on or after July 1, 1987 through June 30, 1988, are taxed at the following rates:

1. On any amount in excess of—

\$ 250,000 up to 300,000 .....	6%
300,000 up to 500,000 .....	7%
500,000 up to 700,000 .....	8%
700,000 up to 900,000 .....	9%
900,000 up to 1,100,000 .....	10%
1,100,000 up to 1,400,000 .....	11%
1,400,000 up to 1,700,000 .....	12%
1,700,000 up to 2,200,000 .....	13%
2,200,000 up to 2,700,000 .....	14%
2,700,000 up to 3,200,000 .....	15%
3,200,000 .....	16%

(g) Transfers to all Class "A" transferees, where decedent dies on or after July 1, 1988, are totally exempt.

**18:26-2.7 Rates of Class "C" transferee**

(a) In the case of a transfer to a Class "C" transferee, where the decedent dies prior to July 1, 1988, the rates are as follows:

On any amount up to \$1,100,000 .....	11%
On any amount in excess of \$1,100,000 up to \$1,400,000 .....	13%
On any amount in excess of \$1,400,000 up to \$1,700,000 .....	14%
On any amount in excess of \$1,700,000 .....	16%

(b) In the case of a transfer to a Class "C" transferee, where the decedent dies on or after July 1, 1988, the rates are as follows:

**TREASURY-TAXATION**

1. On any amount in excess of—	
\$ 25,000 up to 1,100,000 .....	11%
1,100,000 up to 1,400,000 .....	13%
1,400,000 up to 1,700,000 .....	14%
1,700,000 .....	16%

**18:26-5.9 Certain profit sharing and retirement plans**

The proceeds of a profit sharing or retirement plan payable at the date of death of a decedent to a beneficiary named by the decedent or in accordance with the preference schedule of beneficiaries is deemed to be a transfer which takes effect at or after death and is as such subject to the tax, except for the exemption provided by N.J.A.C. 18:26-6.16.

**18:26-5.17 Proceeds of retirement contracts**

The proceeds of a retirement contract purchased on the installment plan are subject to the New Jersey Inheritance Tax when the decedent dies prior to the date of retirement and the payments are returned to either his estate or to a designated beneficiary, except for the exemption provided by N.J.A.C. 18:26-6.16.

**18:26-5.19 Annuity contracts**

(a) (No change.)

(b) Annuity payable under certain trusts and plans which are exempt under Section 2039(c) of the Internal Revenue Code of 1954 may not be exempt for New Jersey Inheritance Tax purposes. The treatment to be accorded payments made under such trusts and plans depends upon the facts and circumstances which exist in each case. (See N.J.A.C. 18:26-6.16.)

**18:26-6.1 Class "A" transfers**

(a) In instances where the decedent dies prior to July 1, 1978, the transfer of property having an aggregate clear market value of \$5,000 or less which is transferred to a father, mother, grandparent, husband, wife, child or children, adopted child or children, mutually acknowledged child, stepchild or issue of any child or adopted child of a decedent is exempt from the New Jersey transfer inheritance tax.

(b) In instances where the decedent dies on or after July 1, 1978 through June 30, 1985, except as provided in (c) below, the transfer of property having an aggregate clear market value of \$15,000 or less which is transferred to a father, mother, grandparent, husband, wife, child or children, adopted child or children, mutually acknowledged child, stepchild or issue of any child or adopted child of a decedent is exempt from the New Jersey transfer inheritance tax.

(c) Transfers to a spouse are totally exempt where the decedent dies on or after January 1, 1985.

(d) In instances where the decedent dies on or after July 1, 1985 through June 30, 1986, the transfer of property having a clear market value of \$50,000 or less which is transferred to a father, mother, grandparent, child or children, adopted child or children, mutually acknowledged child, stepchild or issue of any child or adopted child of a decedent is exempt from the New Jersey transfer inheritance tax.

(e) In instances where the decedent dies on or after July 1, 1986 through June 30, 1987, the transfer of property having an aggregate clear market value of \$150,000 or less which is transferred to a father, mother, grandparent, child or children, adopted child or children, mutually acknowledged child, stepchild or issue of any child or adopted child of a decedent is exempt from the New Jersey transfer inheritance tax.

(f) In instances where the decedent dies on or after July 1, 1987 through June 30, 1988, the transfer of property having an aggregate clear market value of \$250,000 or less which is transferred to a father, mother, grandparent, child or children, adopted child or children, mutually acknowledged child, stepchild or issue of any child or adopted child of a decedent is exempt from the New Jersey transfer inheritance tax.

(g) Transfers to all Class "A" transferees, where decedent dies on or after July 1, 1988, are totally exempt.

**18:26-6.2 Class "C" transfers**

In instances where the decedent dies on or after July 1, 1988, the transfer of property having an aggregate clear market value of \$25,000 or less which is transferred to a brother or sister of decedent,

**ADOPTIONS**

a wife or widow of a son of a decedent or a husband or widower of a daughter of a decedent is exempt from the New Jersey transfer inheritance tax.

**18:26-6.3 Dower or curtesy**

(a) (No change.)

(b) The exemption for dower or curtesy is in addition to the exemption provided for in N.J.A.C. 18:26-6.1.

**18:26-7.10 Executor's and administrator's expenses**

(a) In the absence of a judgment of the court exercising jurisdiction over the probate of an estate, the deduction for executor's or administrator's commissions shall be determined as of the date of death of decedent as follows:

First	\$ 200,000	5 percent
Next	800,000	3½ percent
Excess over	1,000,000	2 percent

provided, however, that where the amount claimed is less than that determined by the application of the rates set forth above, only such amount as claimed shall be allowed; and provided, further, where a formal accounting is not to be filed that, if in the discretion and judgment of the Director, it should appear that the claim for an allowance of executor's or administrator's commissions is in an amount greater than that which results from application of the above rates, he shall allow such amount as is deemed appropriate after having considered the risk, pain and trouble experienced by the fiduciary in the discharge of his or its duties and in this connection the fiduciary shall file an affidavit of services rendered in support of the claim.

(b)-(e) (No change.)

**18:26-8.1 Assessments in general**

Upon the filing of a return with the District Supervisor in the county in which the decedent was a resident, in the case of a resident decedent, or with the Transfer Inheritance Tax Bureau, in the case of a nonresident decedent, the District Supervisor of the county in which the property is situated shall appraise the real and tangible personal property of a decedent and he or she shall forward the return with his or her appraisals and all related data to the Transfer Inheritance Tax Bureau where the final assessment is made.

**18:26-8.6 Final assessment bills**

(a) Upon completion of the assessment, a bill showing the aggregated amount of tax, the names of the taxable beneficiaries and the tax assessed against each will be forwarded to the executor, administrator or other representative of the estate, except when returns are filed pursuant to N.J.A.C. 18:26-8.7, when no bill is issued.

(b) (No change.)

**18:26-8.7 Pre-audit payment of inheritance tax; resident decedent's estate returns**

(a) The representative of an estate may file form L-2 or L-3 (see N.J.A.C. 18:26-9.4(a)2 and 3) and a completed form L-5 directly to New Jersey Inheritance Tax, CN-249, Trenton, NJ 08646 together with a certified or cashier's check in full payment of the tax and interest, if any, as computed by the taxpayer on form L-5, and immediately receive necessary waivers, unless the distribution or valuation of the estate involves:

- 1.-2. (No change.)
3. Contingencies requiring compromise; or
4. Marital deduction.

(b) Returns filed pursuant to this section may be subject to selective audit, and if errors or omissions are found, resulting in an additional tax, a bill for same will be forwarded. Selective audit may be instituted by the bureau within six months of the date of receipt by the bureau of form L-5. Returns accepted as filed result in no receipt or bill being issued.

**18:26-8.12 Life estate in realty held by the entirety**

(a) When real property is devised or transferred to a husband and wife as tenants by the entirety each having a vested life estate in common with the other for their joint lives with a vested estate in

**ADOPTIONS**

fee in the entire remainder subject to defeasance, as to the one first dying, the value of such property for New Jersey Inheritance Tax purposes is ascertained as follows:

1.-2. (No change.)

**18:26-9.4 Resident decedents' returns**

(a) In the case of a resident decedent, all returns must be filed on one of the following forms and accompanied by a copy of the decedent's will, if such decedent died testate, as well as a copy of the decedent's income tax return (form 1040 or 1040A) filed with the Internal Revenue Service for the last full year preceding his date of death.

1. (No change.)

2. Form L-2: May be used in resident estates where letters testamentary or of general administration have been granted and assets can be listed in the space provided. It must be filed with the District Supervisor of the county of which the decedent died a resident except when filed pursuant to N.J.A.C. 18:26-8.7.

3.-4. (No change.)

**18:26-9.10 How tax is payable**

(a) (No change.)

(b) No District Supervisor or employee of his office is permitted to accept any payment of the tax and/or interest. Any payment of the tax or interest received at the office of the District Supervisor is immediately returned to the sender thereof with instructions that the payment is to be forwarded to the Transfer Inheritance Tax Bureau, Trenton, New Jersey 08646. The accrual of interest is tolled only upon receipt by the Bureau in Trenton, New Jersey or payment of the tax and only to the extent of the payment on account.

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

**18:26-12.2 Administration of Transfer Inheritance Tax and New Jersey Estate Tax**

(a) The Act is administered by the Director through the Transfer Inheritance Tax Bureau of the Division of Taxation in the Department of the Treasury.

1. No Inheritance Tax report on the estate of a resident decedent will be accepted nor negotiation entered into with regard to the estate matters of a resident decedent unless such estate is represented by:

i.-iii. (No change.)

iv. A certified public accountant of the State of New Jersey, provided such accountant is designated for such purpose, in writing, by any of the persons enumerated in (a)ii or iii above subject to the condition that the client be notified, in writing, before the certified public accountant commences work on the return, that review of the return by a qualified attorney may be desirable because of the possible application of legal principles to the preparation of the tax return. A copy of the properly executed notification must be filed with the inheritance tax return.

2.-3. (No change.)

**APPENDIX A**  
Emil A. Petrecca, Jr.  
Chief  
Transfer Inheritance Tax  
50 Barrack Street, CN 249  
Trenton, NJ 08646

**DISTRICT SUPERVISORS—INHERITANCE TAX**

Atlantic— Howard Kupperman	1125 Atlantic Avenue, Suite 416 Atlantic City, NJ 08401 (609) 344-9023
Bergen— Inheritance Tax D.O.	50 Main Street Hackensack, NJ 07600 (201) 488-3377
Burlington— Ronald E. Bookbinder	P.O. Box 429 235 High Street Burlington, NJ 08016 (609) 386-4720

**TREASURY-TAXATION**

Camden— Marco M. Agostini	1500 Kings Highway North Cherry Hill, NJ 08002 (609) 795-6116, 6117
Cape May— Harry J. Gibbons	715 Pittsburgh Avenue Cape May, NJ 08204 (609) 884-3530
Cumberland— Harry R. Adler	P.O. Box 537, 80 West Broad Street Bridgeton, NJ 08302 (609) 451-1731
Essex— Judith Carboni	1100 Raymond Boulevard, Rm. 101M Newark, NJ 07102 (201) 648-3486
Gloucester— Arthur J. McDonald Jr.	62 North Broad Street Woodbury, NJ 08096 (609) 848-5858
Hudson Transfer Inheritance Tax CN249 Trenton, NJ 08646	
Hunterdon— Sallie Pisani	R.D. #1, Box 240A (Mailing Address) Annandale, NJ 08801 (201) 735-6689 Landsdown Road Clinton, NJ
Mercer— Marvin A. Van Hise, Jr.	3490 U.S. Highway #1 Princeton, NJ 08540 (609) 987-8500
Middlesex— Franklin F. Feld	46 Bayard Street, 4th Floor New Brunswick, NJ 08901 (201) 745-3214
Monmouth— Peter L. Graham	Old Mill Shopping Plaza 2100 Highway 35 Sea Girt, NJ 08750 (201) 449-0210
Morris— Carl A. Frahn	229 Main Street Chatham, NJ 07928 (201) 635-5200
Ocean— Kenneth B. Fitzsimmons	503 Brick Boulevard Brick, NJ 08723 (201) 920-0253
Passaic— Thomas Melani	2208 Route 208 South Fair Lawn, NJ 07410 (201) 791-4117
Salem— Harold L. Crouch	18 North Main Street Woodstown, NJ 08098 (609) 769-3730
Somerset— John F. Richardson	P.O. Box 3000 County Administrative Building Somerville, NJ 08876 (201) 231-7135
Sussex— Peter J. Barry	P.O. Box 685 120 Route 183 Stanhope, NJ 07874 (201) 347-1630
Union— Harold Simon	272 North Broad Street Elizabeth, NJ 07208 (201) 355-1782
Warren— Harold A. Searles	Manunka Chunk R.D. #1, Box 1783 Columbia, NJ 07832 (201) 475-4497

**OTHER AGENCIES****NEW JERSEY TURNPIKE AUTHORITY****(a)****Control of Traffic on New Jersey Turnpike Speed Limits****Adopted Amendment: N.J.A.C. 19:9-1.2**

Proposed: November 21, 1988 at 20 N.J.R. 2863(b).

Adopted: December 27, 1988 by the New Jersey Turnpike Authority, Frank B. Holman, Executive Director.

Filed: January 3, 1989 as R.1989 d.60, **without change**.

Authority: N.J.S.A. 27:23-1 et seq., specifically 27:23-29, and 39:3-20.

Effective Date: February 6, 1989.

Expiration Date: October 17, 1993.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the adoption follows.

19:9-1.2 Speed limits

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

(e) (No change in text.)

**(b)****CASINO CONTROL COMMISSION****Accounting and Internal Controls Inspection of Slot Machine Jackpots****Adopted New Rule: N.J.A.C. 19:45-1.40B**

Proposed: November 7, 1988 at 20 N.J.R. 2648(a)

Adopted: January 9, 1989 by the Casino Control Commission, Walter N. Read, Chairman

Filed: January 10, 1989 as R.1989 d.72, **without change**.

Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(f), and 5:12-100(e).

Effective Date: February 6, 1989.

Expiration Date: March 24, 1993.

**Summary of Public Comments and Agency Responses:**

The adopted new rule is similar to a proposed rule which was previously requested by the Division of Gaming Enforcement (Division) and published at 20 N.J.R. 1069(a). Hearings were held on that and other proposals of the Division on August 10 and 24, 1988 (see 20 N.J.R. 1680(a)). Although the Division subsequently withdrew its original proposal, numerous written and oral comments were received by the Commission concerning the Division's original proposal which were considered when the present version of the rule was drafted. At the time of publication of the proposed new rule now being adopted, the Commission requested that anyone wishing to comment on the new version submit another comment and not rely upon comments which were previously submitted regarding the Division's original proposal. Trump Plaza, a casino licensee, submitted the only new comment.

COMMENT: Trump Plaza proposed that the rule should contain a time limit of one hour within which the Division must commence its inspection after being notified of a jackpot. Excepted from the time limitation would be those jackpots where there is evidence of a malfunction. Trump Plaza further proposed that the rule should state that where the Division fails to start the inspection within one hour, then the casino licensee may proceed to pay the winning jackpot.

RESPONSE: Comments which were received regarding the Division's prior proposed new rule indicated that, after some problems at the inception of the voluntary program, the Division has been able to steadily reduce the time required to perform the jackpot inspections. With rare exception, the delays do not appear to be excessive. If Trump Plaza's suggestion were adopted, the Division might be precluded from inspecting

some jackpots when several large jackpots were hit within a short period of time. Absent a showing that the Division will cause significant inconvenience to patrons due to its inability to timely complete jackpot inspections, the Commission maintains that the law enforcement benefits of the new rule currently outweigh the potential benefits of the amendment proposed by Trump Plaza.

Additionally, the Commission notes that the adopted rule does not require the inspection of all jackpots, but permits the Division to decline to inspect any jackpot. The Commission anticipates that the Division will exercise its discretion in this regard reasonably and decline to inspect jackpots when sufficient inspection personnel are unavailable.

COMMENT: Trump Plaza also commented that the adopted new rule is too vague as to the instructions which must be given by the Division concerning whether a jackpot should be paid. Trump Plaza suggested that the rule should require that the Division "order" the casino in a "clear and unequivocal manner not to pay the jackpot" if it does not want the jackpot paid.

RESPONSE: The Commission does not consider the adopted new rule to be unacceptably vague in this regard. The Division inspectors and casino licensee's personnel will presumably be in close communication during and immediately after the inspection, so there should be no reason for a lack of clarity as to their positions.

In addition, the Commission notes that the adopted new rule expressly states that even if the Division should inspect but not object to the payment of a jackpot, this would not prohibit the Division from subsequently charging any person in connection with the payment of that jackpot. Thus, regardless of the specific form of the Division's direction, if any, the ultimate responsibility for paying a jackpot will remain with the casino licensee and its personnel.

**Full text** of the adoption follows.

**19:45-1.40B Inspection of slot machine jackpots**

(a) Prior to the payment of any slot machine jackpot paid pursuant to N.J.A.C. 19:45-1.40 which has a value of at least \$25,000, any jackpot of merchandise or a thing of value to be paid pursuant to N.J.A.C. 19:45-1.40A, or any jackpot where there is evidence of a malfunction, a casino licensee shall notify the Division that a winning combination has been registered and permit the Division to inspect any slot machine, progressive equipment or related equipment involved. Upon notification by the casino licensee, the Division shall advise the casino licensee whether the Division will conduct an inspection. When an inspection is conducted, the casino licensee may award payment of the jackpot to the winning patron upon completion of the inspection absent a contrary direction from the Division pursuant to its authority under the Act. Failure of the Division to object to the payment of the jackpot upon completion of its inspection shall not constitute waiver or estoppel of any charge, issue or claim raised in any criminal or regulatory complaint subsequently filed against any person in connection with the winning or payment of that jackpot.

(b) Nothing in (a) above shall be deemed to limit the obligation of a casino licensee under the Act and the Commission's rules to cooperate with the Division or Commission in any inquiry or investigation concerning slot machine jackpots.

**(c)****ATLANTIC COUNTY TRANSPORTATION AUTHORITY****Rules of Operation****Redoption with Amendments: N.J.A.C. 19:75**

Proposed: July 18, 1988 at 20 N.J.R. 1680(b).

Adopted: January 10, 1989 by the Atlantic County

Transportation Authority, Wade Lawson, Executive Director.

Filed: January 13, 1989 as R.1989 d.81, **without change**.

Authority: N.J.S.A. 40:35B-15(h) and (x) and 15.1.

Effective Date: January 13, 1989 for redoption;

February 6, 1989 for amendments.

Expiration Date: January 13, 1994.

**Summary of Public Comments and Agency Responses:**

On August 10, 1988 the Atlantic County Transportation Authority, under the procedures of the Office of Administrative Law, held a public hearing regarding the intent to readopt N.J.A.C. 19:75 in its entirety with certain amendments thereto. The following steps were taken to insure adequate opportunity for public comment.

1. Publication of the entire text with amendments in the New Jersey Register on July 18, 1988 at 20 N.J.R. 1680(b).

2. On August 3, 1988, a mass mailing of letters announcing the intended re-adoption, with amendments, of N.J.A.C. 19:75 was sent out to some 70 community leaders, elected officials and business entities. The letter indicated the time and place of the public hearing and the five locations in the County where copies of the existing rules and copies of the rules proposed for re-adoption with amendments could be reviewed by interested parties and invited inquiries by interested parties.

3. On July 13, 1988, legal ads were placed with the Atlantic City Press and Philadelphia Inquirer announcing the time and place of the public hearing and further advising that written comment would be received until August 17, 1988 by the Authority, giving its official address.

4. One week prior to the public hearing, public service announcements were placed with local radio stations, again announcing the time and place of the hearing and the invitation to receive written comment until August 17, 1988. These announcements also advised where texts of the rules could be reviewed.

On August 10, 1988, the public hearing was held as advertised. There were 10 members of the public in attendance, of which three persons elected to make comment. A letter from Atlantic City Councilman James Whelan was delivered to the meeting and read into the record. In addition, the Authority reviewed two written comments and conducted a conference with representatives of Atlantis Casino Hotel with regard to the rules.

Presented below is a summary of the comments received and the responses made by the Authority.

**COMMENT:** The three speakers at the public hearing, to wit: Alan Doerr of Showboat Hotel Casino, Michael Leso of Bally's Park Place, and Joseph Witterschein of Bally's Grand, all addressed the proposed amendment at N.J.A.C. 19:75-4.2(d) which respects actions to be taken to reduce bus congestion in Atlantic City during peak bus volume periods. Each speaker was concerned that this proposed amendment would set mandatory bus volumes for those time periods.

**RESPONSE:** The Authority intends, by adoption of N.J.A.C. 19:75-4.2(d), to provide a mechanism whereby it will attempt, in concert with the casinos and other activity centers, to reduce the negative impacts of bus traffic during periods of excessively high volume. The Authority assured the commenters that implementation of this subsection would come only after discussions with each individual casino in hopes of formulating procedures specific to each site which will alleviate the problems resulting from high bus volumes.

**COMMENT:** Atlantic City Councilman James Whelan had delivered a letter to be read at the public hearing. His letter supported the efforts of the Authority to reduce the impact of high bus volumes by way of the promulgation of N.J.A.C. 19:75-4.2(d).

**RESPONSE:** No specific response was made to this written comment.

**COMMENT:** Atlantis Casino Hotel requested a meeting with Authority personnel regarding the provisions for alleviating peak hour bus traffic congestion. Atlantis was particularly concerned about the setting of approved bus volumes for each casino inasmuch as the period of reorganization in the Bankruptcy Court had brought about, in their opinion, unusually low bus volumes for the past several years.

**RESPONSE:** At the above meeting, and subsequently by letter, the Authority stated its intent to work with each site individually to determine not only peak hour capacities, but individualized methods for reducing negative traffic impacts during peak bus traffic hours.

**COMMENT:** Bally's Grand Hotel and Casino, through its attorney, Martin Wilson, Esquire, gave written comment dated August 16, 1988, specifically addressing N.J.A.C. 19:75-4.2. The comment suggested that if this provision is adopted, "that prior to any implementation that a defined policy be created upon which these restrictions would be imposed and a right unto each of the operations to have input as to these conditions prior to their actually becoming effective."

**RESPONSE:** The Authority, through its Acting Executive Director, verbally replied that it was the intent of the Authority to work individually with each activity center to formulate bus capacities and procedures for dealing with peak bus volume traffic problems.

**COMMENT:** The Authority received written comment on August 12, 1988 from Thomas D. Carver, President, Casino Association of New Jersey. Mr. Carver commented specifically with reference to N.J.A.C. 19:75-4.2. First, he stated that the economic impact had not been assessed. Second, he noted that other measures, such as synchronizing of traffic signals, could better achieve the ends which the rule was intended to produce. Third, he supported the proposal to the extent that it provided for cooperation between the Authority and the casinos.

**RESPONSE:** The Authority, through its Acting Executive Director, verbally replied that it was the intent of the Authority to work individually with each activity center to formulate bus capacities and procedures for dealing with peak bus volume traffic problems.

**Full text** of the re-adoption follows.

CHAPTER 75  
RULES OF THE ATLANTIC COUNTY  
TRANSPORTATION AUTHORITY (ACTA)

SUBCHAPTER 1. GENERAL PROVISIONS

19:75-1.1 Definitions

The following terms shall have the following meanings, unless the context clearly indicates otherwise.

"Activity center" means all such land uses, other than the Atlantic City Municipal Bus Terminal, whose activities generate bus traffic and at whose site bus passengers are loaded or discharged.

"Bus" means all multi-passenger vehicles engaged in motorbus regular route service, motorbus charter service and motorbus regular route in the nature of special operation or casino bus operation as defined by N.J.S.A. 40:35B-3(h) and (j) and N.J.S.A. 48:4-1 et seq., respectively, which vehicles include but are not limited to vehicles known as buses, minibuses and vans.

"Intercept" means the procedure of either temporarily holding buses at off-street facilities or employing some other approved method for the purpose of regulating the flow of bus traffic to activity centers.

"Manifest" means a record of daily bus arrivals by an activity center, which includes, at a minimum, bus company names, bus numbers, arrival and departure times, origin, destination points and the Authority permit number.

"Permit" means the receipt issued by the Authority confirming proof of payment of the Bus Management fee.

"Secondary access routes" means all such streets, roads and/or routes depicted on Diagram B which shall be utilized only for bus access to bus parking lots as described by N.J.A.C. 19:75-6.1(a), Authority operated or approved bus intercept facilities, non-casino hotel activity centers and alternate access to activity centers when same is authorized by the Authority.

19:75-1.2 Bus itinerary

(a) The owners or operators of all regular route motorbuses, charter motorbuses regular route in the nature of special motorbuses entering or operating in Atlantic County, unless specifically exempted elsewhere in this Chapter, may be required within seven days of the date of written demand by the Authority, to file with the Authority a notice indicating proposed routes of travel and destination or destinations within the county and the bus parking lot at which such buses shall park. All such proposed routes, destinations and bus parking lots shall be in conformance with this Chapter.

(b) The owners or operators of all combination buses shall file the notice provided in (a) above prior to the operation of any combination buses in Atlantic County. Combination buses shall proceed in one direction only, either east to west or west to east, and shall travel on the most direct authorized route, from initial passenger discharge to final passenger discharge at the activity centers on its itinerary following entry into the City of Atlantic City. Combination buses shall proceed in the same manner when picking up passengers just prior to exiting the City of Atlantic City.

(c) A copy of the combination bus itinerary shall be maintained in the possession of the driver of any combination bus, and shall be produced by the driver upon request by intercept personnel.

19:75-1.3 Exempt buses

The provisions of this Chapter shall apply to all motorbus charter services, motorbus regular route in the nature of special services, and motorbus regular route services in Atlantic County except those services operated under "The New Jersey Public Transportation Act of 1979", including, but not limited to, New Jersey Transit buses which operate solely from municipal bus termini approved by the Authority and such other services specifically exempted herefrom by the New Jersey Department of Transportation. A schedule of such exempted motorbus services shall be forwarded to the Authority, which shall thereafter serve such schedules on the police departments of the several municipalities in Atlantic County.

SUBCHAPTER 2. ROUTES OF TRAVEL

19:75-2.1 Routes of travel; generally

(a) (No change.)

(b) Except for the City of Atlantic City, bus routes in Atlantic County are US Route 30, US Route 40/322 and the Atlantic City Expressway. All other routes are considered to be feeder routes to these major access roadways. The major access roadway is designed to enable the bus to enter the City of Atlantic City in the zone where its destination is located.

1. US Route 206/54 is to be used as a feeder route in the western area of Atlantic County.

2. The Garden State Parkway is to be used as a feeder route in the eastern area of Atlantic County.

3. All other county roadway networks approved for bus travel are for local feeder purposes and are as described as follows:

i. US Route 9: Access to and from Smithville via N.J. Route 157 between US Route 30 and connection with US Route 9:

ii. (No change.)

iii. County Road 561/Jimmy Leeds Road: Access from Route 30 at Pomona for travel to and from US Route 9.

iv. Delilah Road (County Route 646) from US Route 40/322 to US Route 30: To be used by traffic transferring from one major access roadway to another and for transfer of airport-destined traffic.

v. Tilton Road (County Route 563) from Egg Harbor City US Route 30 to Renault Winery.

vi. Route 52 McArthur Boulevard/Laurel Drive from the Atlantic County boundary to the Garden State Parkway at Interchange 30N and Mays Landing-Somers Point Road between US Route 9 and Shore Road and US Route 9 between Mays Landing-Somers Point Road and Garden State Parkway at Interchange 29S.

vii. Egg Harbor Road (County Road 561) from Route 54 to Route 30.

19:75-2.2 Atlantic City access routes

(a) For the purpose of designating routes for bus entry thereinto and exit therefrom, the City of Atlantic City is hereby divided into four zones as shown on Diagram "B" below.

(b) All buses entering or exiting the City of Atlantic City shall do so either on routes prescribed for the zone in which the bus destination is located or at the point for departure of such buses, as the case may be, as set forth below:

Zones	Entry/Exit Route
Zone 1	Route 40
Zone 2	Atlantic City Expressway
Zone 3	Route 30'
Zone 4	Route 30

'Buses entering or leaving Zone 3 may use the Atlantic City Expressway via Atlantic Avenue.

(c) All combination buses entering or exiting the City of Atlantic City shall do so only on routes prescribed for the zone in which is located the initial destination of such bus, and shall exit only on such routes prescribed for the zone in which is located the final point of departure.

19:75-2.3 Routes of travel to and from casino hotels, Atlantic City Convention Center and Atlantic City Rail Terminal

(a) Routes to and from Bally's Grand:

1. Arrival: via Albany Avenue to Pacific Avenue to Providence or Boston Avenues and entry to the Bally's Grand Garage.

2. Departure: via the Bally's Grand Garage to Providence or Boston Avenues to Captain O'Donnell Parkway/Atlantic Avenue to Albany Avenue.

(b) Routes to and from Tropicana:

1. Arrival: via Albany Avenue to Atlantic Avenue to Brighton Avenue to the Transportation Center.

2. Departure: via Morris Avenue to Atlantic Avenue/Captain O'Donnell Parkway to Atlantic Avenue.

(c) Routes to and from Atlantis:

1. Arrival: via Albany Avenue to Atlantic Avenue to Missouri Avenue to Pacific Avenue to the Convention Hall entrance opposite Georgia Avenue or to Florida Avenue to the casino.

2. Departure: via Convention Hall West exit or Florida Avenue to Pacific Avenue to Mississippi Avenue to Atlantic Avenue/Captain O'Donnell Parkway to Albany Avenue.

(d) Routes to and from Caesar's:

1. Arrival: via the Atlantic City Expressway to Missouri Avenue to casino bus parking lot.

2. Departure: via Arkansas Avenue to the Atlantic City Expressway.

(e) Routes to and from Trump Plaza:

1. Arrival: via the Atlantic City Expressway to Missouri Avenue to casino bus lot.

2. Departure: via Mississippi Avenue to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

(f) Routes to and from Bally's:

1. Arrival: via the Atlantic City Expressway to Missouri Avenue to Atlantic Avenue to Ohio Avenue to Pop Lloyd Boulevard to Park Place to the casino.

2. Departure: via Park Place around Brighton Park to Indiana Avenue to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

(g) Routes to and from Claridge:

1. Arrival: via the Atlantic City Expressway to Missouri Avenue to Atlantic Avenue to Ohio Avenue to the casino Transportation Center.

2. Departure: via Park Place to Pop Lloyd Boulevard to Michigan Avenue to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway. Alternate route: via Park Place around Brighton Park to Indiana Avenue to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

(h) Routes to and from Sands:

1. Arrival: via the Atlantic City Expressway to Missouri Avenue to Atlantic Avenue to Dr. Martin Luther King, Jr. Boulevard to Pop Lloyd Boulevard to the casino.

2. Departure: via Pop Lloyd Boulevard to Indiana Avenue to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

(i) Routes to and from Resorts:

1. Arrival: via Route 30/Absecon Boulevard to Virginia Avenue to Atlantic Avenue to Pennsylvania Avenue to the casino.

2. Departure: via Pennsylvania Avenue to Route 30/Absecon Boulevard. Alternate route: via Pennsylvania Avenue to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

(j) Routes to and from Harrah's:

1. Arrival: via Route 30/Absecon Boulevard to Huron Avenue to Brigantine Boulevard, over the Brigantine Bridge to the casino, via the turnaround on the Brigantine side of the Bridge.

2. Departure: via Brigantine Boulevard to Huron Avenue to Route 30/Absecon Boulevard.

(k) Routes to and from Trump's Castle:

1. Arrival: via Absecon Boulevard to Huron Avenue to the casino.

2. Departure: via Huron Avenue to Route 30/Absecon Boulevard.

(l) Routes to and from Showboat:

## ADOPTIONS

1. Arrival: via Route 30/Absecon Boulevard to Virginia Avenue to Atlantic Avenue to Maryland Avenue to Pacific Avenue to the Transportation Center.

2. Departure: via Pacific Avenue to New Jersey Avenue to Atlantic Avenue to Pennsylvania Avenue to Route 30/Absecon Boulevard. Alternate route: via Pacific Avenue to New Jersey Avenue to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

(m) Routes to and from Taj Mahal:

1. Arrival: via Route 30/Absecon Boulevard to Virginia Avenue to the Transportation Center. Alternate route (garage berths): via Route 30/Absecon Boulevard to Virginia Avenue to Atlantic Avenue to Pennsylvania Avenue to garage.

2. Departure: via tunnel connection to Pennsylvania Avenue to Route 30/Absecon Boulevard. Alternate route (garage berths): via Pennsylvania Avenue to tunnel connection to Virginia Avenue to Pacific Avenue to New Jersey Avenue to Atlantic Avenue to Pennsylvania Avenue to Route 30/Absecon Boulevard. Alternate route from tunnel connection or garage berths: proceed to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

(n) Routes to and from Atlantic City Convention Center:

1. Arrival: via the Atlantic City Expressway to Missouri Avenue to Pacific Avenue to Mississippi Avenue to tunnel.

2. Departure: via tunnel exit to Pacific Avenue to Arkansas Avenue to the Atlantic City Expressway.

(o) Routes to and from Atlantic City Rail Terminal:

i. Arrival: via the Atlantic City Expressway to Missouri Avenue to Arctic Avenue to Michigan Avenue to the Atlantic City Rail Terminal.

2. Departure: via the Atlantic City Expressway. Alternate route: via Kirkman Boulevard to Michigan Avenue to Atlantic Avenue.

## SUBCHAPTER 3. BUS INTERCEPT

19:75-3.1 (No change.)

19:75-3.2 Intercept procedure

(a) Buses subject to intercept at off-street facilities and when so notified by the activity center and/or the Authority, shall proceed to the approved intercept facility designated by the activity center and/or the Authority, and shall be dispatched as and when on-site capacity permits, or as otherwise directed by the Authority. Intercept and dispatch by other than Authority personnel shall be subject to review and modification by the Authority.

(b) Any intercept procedure that does not require the physical interception of buses at an off-street facility shall be subject to prior approval by the Authority.

(c) Upon 30 days written notice from the Authority, all activity centers providing gratuities, incentives or premiums to bus passengers shall provide adequate personnel at approved intercept facilities to greet such passengers and dispense all such gratuities, incentives or premiums at the intercept facility.

## SUBCHAPTER 4. DISCHARGE AND LOADING OF PASSENGERS

19:75-4.1 (No change.)

19:75-4.2 On-site bus capacity; designated discharging and loading areas; certificate of on-site capacity; established bus volumes; certificate of established bus volume; notice to exceed established bus volume

(a) The Authority, on its own initiative or upon application by an activity center or proposed activity center, may designate the number of buses which may be present at any given time at each activity center, which number shall constitute the "on-site bus capacity" for the activity centers. The Authority may also designate the specific area or areas on-site where buses may discharge and load passengers at the activity centers. Where appropriate or necessary, on-site capacity and designated areas may be allocated by the Authority between buses carrying:

1. Passengers arriving and leaving on the same day (day buses); and

2. Passengers remaining overnight or longer (overnight bus).

## OTHER AGENCIES

(b) The Authority shall issue to each activity center a certificate setting forth its on-site bus capacity and designating all day bus and overnight bus discharging and loading areas, a copy of which shall be filed with the police department of the municipality in which such activity center is located. Certificates shall be effective for a period of one (1) year unless earlier modified by the Authority pursuant to N.J.A.C. 19:75-4.3.

(c) No activity center shall:

1. Exceed its specific on-site capacity;

2. Permit any buses to be present on-site other than in designated discharging and loading areas; or

3. Utilize overnight bus areas for day bus discharging and loading.

(d) The Authority may, in consultation with any casino activity center, designate the number of buses which may be present at any casino activity center between the hours of 4:00 P.M. to 7:00 P.M. This number shall constitute the "established bus volume" for such casino activity center.

(e) The Authority shall issue to any casino activity center for which a bus volume has been established pursuant to (d) above a certificate setting forth the "established bus volume". The certificate shall be effective for a period of one year unless earlier modified by the Authority pursuant to N.J.A.C. 19:75-4.3.

(f) Each casino activity center shall give no less than 48 hours notice to the Authority whenever its bus volume is anticipated to exceed 120 percent of its established bus volume. Such notice shall include a plan by the casino activity center, to be approved by the Authority, for the management of such excess bus volume. The plan may include, but shall not be limited to, provisions for additional staffing, reduction of the time such buses shall remain on site, greeting of passengers at intercept facilities and rescheduling of bus arrivals and departures. In the event such plan shall not be approved by the Authority, or if the affected casino activity center shall fail or refuse to comply with any amendment or amendments to the plan by the Authority, such casino activity center shall not be permitted to receive buses in excess of its established bus volume on the date for which notice has been given. A violation of this subchapter shall subject the affected casino activity center to penalties as provided for in N.J.A.C. 19:75-8.1.

19:75-4.3 Modification of authorized on-site capacity or established bus volume; emergency procedures

(a) The Authority shall regularly monitor all bus operations at activity centers. When, in the opinion of the Authority, traffic conditions in the city of Atlantic City and Atlantic County require, the Authority shall notify any activity center of its intention to reduce or otherwise modify the on-site bus capacity and/or the established bus volume of such activity center or alter its discharging and loading areas.

1.-2. (No change.)

3. The activity center may request a hearing to oppose the proposed action, which request must be in writing and must be served on the Authority within five business days of receipt by the activity center of the Authority's notice of intention to reduce or modify.

4. If requested, the hearing shall be conducted in accordance with the procedures set forth in N.J.A.C. 19:75-9.4(a)3.

5. The proposed action by the Authority shall not take effect until such hearing is concluded and a final determination rendered therein.

6. Failure to make timely written request for such hearing shall result in the proposed action taking effect on the date set forth in the notice of intention to reduce or modify, and the Authority shall issue a new certificate setting forth the specific reductions and/or modifications pursuant to N.J.A.C. 19:75-4.2(b) and/or (e).

(b) When, in the opinion of the Executive Director of the Authority, extraordinary traffic volumes or other circumstances create an imminent peril to the health, safety and welfare of the residents of the city of Atlantic City and Atlantic County, which peril may be reduced or avoided by the limitation of on-site bus operations at the activity centers, the Executive Director of the Authority may issue an emergency order reducing on-site capacity, establishing bus volume and/or modifying discharging and loading areas for any or all of the activity centers.

1. Such emergency orders shall be in writing, setting forth the specific reasons for such orders and shall become effective immediately upon service of the emergency order upon the affected activity center or centers, and the police department of the municipality in which the affected activity centers are located.

2. Such emergency orders shall continue in effect until the imminent peril to health, safety and welfare has ceased, or for a period of seven days, whichever is shorter, unless extended by the Board of the Authority at a duly scheduled hearing.

3. Written notice of such hearing shall be served upon the affected activity centers and the police departments of the municipalities in which the affected activity centers are located.

4. Such hearing shall be conducted in accordance with the procedures set forth in N.J.A.C. 19:75-9.4(a)(3).

5. During the effective period of any emergency order, the Authority shall endeavor, by means of bus intercept or other procedures, to minimize the impact of the emergency orders on bus operations at the activity centers.

19:75-4.4 Additional site approval; requests by activity centers to increase or modify on-site bus capacity or discharging or loading areas

(a) Additional sites may be approved as activity centers with on-site bus capacities and designated discharging and loading areas by the Authority upon written application, containing, without limitation, the following:

1. Location, dimensions and legal description of the proposed location;

2. Number of buses proposed to be on site at any one time;

3. Security measures and traffic control to be provided;

4. Evidence of on-site radio/telecommunication equipment;

5. A traffic impact statement where required by the Authority; and

6. Drawing to scale, with dimension in feet, showing discharging/loading site.

(b) All applications shall be submitted with an original and eight (8) copies. One additional copy of the application shall be served upon the police department of the municipality in which the proposed site is located and proof of such service by way of affidavit or certified mail return receipt shall be filed with the Authority. Upon filing with the Authority, the application shall be acted upon in the manner and in accordance with the procedure set forth in N.J.A.C. 19:75-9.4, and thereafter the Authority shall issue a certificate, pursuant to N.J.A.C. 19:75-4.2(b).

(c) In making a determination, the Authority shall consider, among other things, the availability of other sites, anticipated traffic conditions, the impact of the request on the traffic flow, the necessity to the applicant for the additional site, and compatibility with designated routes as provided herein.

(d) As a condition of approval, all discharge/loading sites shall have:

1. Dimensions no less than 45 feet by 12 feet for each bus;

2. Supervisory personnel on site during discharging/loading of passengers;

3. Radio or telecommunication equipment for the purpose of intercept and dispatch procedures.

(e) No discharging/loading sites located in the traffic or curb lanes of Pacific Avenue in the City of Atlantic City will be approved.

(f) All activity centers in Atlantic County constructed subsequent to the effective date of this Chapter shall obtain the approval of the Authority for bus discharging and loading site capacity.

(g) Any existing activity center may apply to the Authority for additional on-site bus capacity or modified discharging and loading areas in the manner set forth in (a) through (e) above which request shall constitute a request for a major variance governed by N.J.A.C. 19:75-9.

## SUBCHAPTER 5. BUS OPERATIONS

19:75-5.1 Procedure following discharge of passengers

Upon discharging of all passengers, buses shall forthwith proceed to an approved bus parking lot on the most direct approved route. Buses shall not be operated solely for the convenience of the driver between discharge and loading of passengers.

19:75-5.2 Speed limit in parking lots

Operating speeds in parking lots will not exceed 5 miles per hour.

19:75-5.3 Engine idling requirements

No buses shall be stopped with their engines running except as otherwise provided herein. At such time as the bus reaches a bus parking lot, the engine shall be shut off except as is specifically permitted by the New Jersey Department of Environmental Protection idle standard set forth in N.J.A.C. 7:27-14.3.

19:75-5.4 Dumping of waste

Buses shall dump waste only at locations and into receptacles approved by the Authority.

## SUBCHAPTER 6. PARKING

19:75-6.1 Approved parking lots; exceptions

(a) All buses subject to the provisions of this Chapter shall park in lots approved by the Authority with the exception that privately owned bus parking lots in existence as of February 1, 1983 which exclusively accommodate motorbuses owned by the owner of any such parking lot and are not rented or leased to any other motorbus may continue in operation whether or not approved by the Authority.

(b) The requirement of Authority approval for bus parking lots shall nevertheless apply to the exceptions contained in this subchapter in the event that the licensed parking capacity of such exempted bus parking lot shall increase after February 1, 1983, or if the license for such exempted bus parking lot shall be transferred after February 1, 1983.

(c) A list of approved bus parking lots is available from the Authority upon request.

19:75-6.2 Bus parking lot approvals

(a) All proposed bus parking lots or bus parking lots commencing operation subsequent to February 1, 1983, in addition to any and all other required municipal, county, State or Federal approvals, shall obtain approval from the Authority. Approval by the Authority shall be granted only if the proposed lot:

1. Is within a one-way driving distance of five miles of that portion of Atlantic Avenue between Maine and Albany Avenues within the corporate limits of the City of Atlantic City;

2. Has a minimum of 50 bus parking spaces, all of which have minimum dimensions of 45 feet by 12 feet;

3. Segregates bus and car parking, which shall require a minimum separate exits and entrances and a physical barrier separation;

4. Has lighting and is attended during all hours of operation;

5. Contains signs conforming to the standards of the municipality in which the lot is located;

6. Is located on bus routes approved by the Authority;

7. Possesses two-way radio or telephone equipment sufficient to participate in bus intercept and dispatch activity;

8. Does not materially impair the intent and purpose of these regulations; and

9. Has filed an impact statement acceptable to the Authority, which includes, without limitation, air quality, traffic circulation and neighborhood impact analysis.

(b) Applicants for approval of the Authority of any proposed bus parking lot shall submit original and eight copies of the application on forms approved by the Authority, including any maps, plats or drawings required by the Authority which shall contain, and without limitation, the following:

1. Location, dimensions and legal description of proposed lot;

2. Hours of operation;

3. Security measures to be provided;

4. Provision for lavatory dumping facilities;

5. Evidence of on-site radio/telecommunications equipment and valid licenses, if required, for the same; and

6. Impact statement as defined in subchapter N.J.A.C. 19:75-1.1(g).

(c) One additional copy of the application shall be served upon the police department of the municipality in which the proposed bus parking lot is located and proof of such service by way of affidavit or certified mail return receipt shall be filed with the Authority. Upon

**ADOPTIONS**

filing with the Authority, the application shall be acted upon in the manner and in accordance with the provisions set forth in N.J.A.C. 19:75-9.4.

(d) The requirement of Authority approval for bus parking lots shall nevertheless apply to the exceptions contained in this subchapter in the event that the licensed parking capacity of such exempted bus parking lot shall increase after February 1, 1983, or if the license for such exempted bus parking lot shall be transferred after February 1, 1983.

(e) All approvals shall be conditioned upon compliance with the following:

1. Municipal zoning or planning board approval;
2. Maintenance of the bus parking lot in the condition set forth in the application or any amended application approved by the Authority;
3. On-site posting in a conspicuous place of Authority-approved bus routes and regulations; and
4. Submission of weekly reports on forms supplied by the Authority, setting forth, at a minimum, the number of buses parked.

(f) The Authority retains the right to enter upon and inspect all approved bus parking lots during hours of operation for the purpose of verifying compliance with the provisions of this Chapter. In the event that the owner and/or operator of any bus parking lot shall fail to comply with any provision of this subchapter, the Authority shall notify such owner and/or operator of the specific violation thereof. The Authority, in addition to any other violation provided for herein, shall revoke approval of such bus parking lot unless the enumerated violations have been corrected within 15 days of notification to the owner and/or operator.

(g) All approvals granted by the Authority pursuant to this subchapter shall be for an effective period of one year. Any renewal or extension of any approval shall only be granted pursuant to the provisions of (h) below. Such approval may be earlier terminated by the Authority in the event that:

1. The use of the property as a bus parking lot is terminated within such one year period; or
2. The approval by the Authority is withdrawn pursuant to (f) above.

(h) Renewals: 120 days prior to the expiration of the approval period provided for herein, the owner of a bus parking lot shall file with the Authority a written request for a one year renewal of the approval. Such written request shall contain certification by the owner that the bus parking lot complies with all the terms and conditions set forth in this subchapter governing the granting of bus parking lot approval, including any amendments to this subchapter taking effect prior to the expiration of the term of the original

**SUBCHAPTER 8. VIOLATION AND PENALTIES**

**19:75-8.1 Specific offenses**

For any violation of the following provisions of this chapter, the violator shall be subject to minimum penalties as set forth below:

	1st Offense	Fine 2nd Offense	3rd Offense
Traveling on unapproved routes Subchapter 2.	\$75.00	\$200.00	\$400.00
Illegal bus parking Subchapter 6.	75.00	200.00	400.00
Non-payment of bus management fee Subchapter 7.	75.00	200.00	400.00
Failure to intercept when required Subchapter 3.	75.00	200.00	400.00
Failure to possess variance if required Subchapter 9.	75.00	200.00	400.00
Discharge/load passengers at non-approved location Subchapter 4.	75.00	200.00	400.00
Activity center exceeding capacity Subchapter 4.	75.00	200.00	400.00
Operating bus for driver's convenience Subchapter 5.	75.00	200.00	400.00
Failure to file combination bus itinerary			

**OTHER AGENCIES**

approval. The request for renewal shall be processed by the Authority pursuant to the provision of N.J.A.C. 19:75-9.4. Failure to apply for renewal of a bus parking lot approval within the time provided for herein shall result in the expiration of such approval at the end of one year from the date of issuance. The owner whose bus parking lot approval has expired may file a new application for approval pursuant to the provisions of (a) through (g) above at any time.

(i) The Authority is specifically empowered to consider the application of any amendment to this subchapter which will take effect prior to the expiration of a bus parking lot approval when determining whether to grant or deny renewal thereof.

**SUBCHAPTER 7. BUS MANAGEMENT FEE**

**19:75-7.1 Mandatory payment of fees; proof of payment**

(a) The owner and/or operator of any bus subject to the provisions of this Chapter shall:

1. Pay a bus management fee to the Authority in the amount of \$1.00 for each bus which it owns or operates and which enters a municipality within the district in which casino gambling is authorized pursuant to N.J.S.A. 9:12-1 et seq. Payment of the aforesaid fee shall be for each such entry by any bus; and
2. Exhibit proof of such fee payment in the door right side window.

**19:75-7.2 Modes of payment**

(a) All bus operators or owners required to pay the fee provided for in this subchapter shall do so in accordance with the following:

1. Payment of a fee shall be made in advance by sending a check or money order payable to the Atlantic County Transportation Authority at Atlantic County Transportation Authority, 1625 Atlantic Avenue, Fourth Floor, Atlantic City, NJ 08401. Such advance payment including costs for postage and handling must be received no less than two weeks prior to the scheduled arrival date of any bus subject to this subchapter.
2. Payment of the fee shall be made in advance or at the following locations prior to the discharge of any passengers at any activity center:
  - i. Albany Avenue (Two Guys) intercept lot;
  - ii. Missouri Avenue bus parking and intercept lot (Missouri Avenue and Baltic Avenue);
  - iii. Huron Avenue bus parking and intercept lot;
  - iv. All approved private bus parking facilities;
  - v. Such other locations as the authority shall designate.

**19:75-7.3 and 7.4 (No change.)**

**OTHER AGENCIES**

**ADOPTIONS**

Subchapter 1. Combination bus traveling in violation of bus itinerary	75.00	200.00	400.00
Subchapter 1. Failure to notify Authority of anticipated excess bus volume	75.00	200.00	400.00
Subchapter 4. Exceeding Established Bus Volume without Authority	75.00	200.00	400.00
Approval Subchapter 4. Excessive Engine Idling	75.00	200.00	400.00
Subchapter 5.	75.00	200.00	400.00

19:75-8.2 and 8.3 (No change.)

**SUBCHAPTER 9. VARIANCES; PROCEDURE**

19:75-9.1 Variance; minor and major

(a) In particular cases and for special reasons, the Authority may grant a variance from the strict application of the provisions of this chapter. Such variances shall be designated as minor variances and major variances.

1. A minor variance, if granted, shall permit a one-time deviation without penalty from the provisions regarding designated routes, sites and site capacity for loading and discharging passengers, parking and/or intercept. A minor variance shall be granted for a specified date. The procedure for application for and determination of a minor variance are as set forth in N.J.A.C. 19:75-9.2 below.

2. (No change.)

19:75-9.2 Application for minor variance; determination by Executive Director; appeal to board

(a) (No change.)

(b) All applications for a minor variance shall be filed with the Executive Director of the Authority no later than three business days prior to the date for which the variance is requested.

(c) The Executive Director or designee shall review all applications for minor variances. The application shall be approved upon a showing of special reasons and only if the variance can be granted without substantial detriment to the public good nor substantial impairment to the intent and purpose of the provisions of this chapter;

(d) If the Executive Director shall grant any minor variance, he or she shall forthwith notify the applicant and the police department or departments affected in writing. Such notice must be in possession of the applicant and bus operator and displayed to any enforcement official upon request. Failure to possess and display the aforesaid notice of variance may result in the imposition of penalties under N.J.A.C. 19:75-8 notwithstanding the grant of a minor variance.

(e) If the Executive Director shall deny any minor variance, he or she shall forthwith notify the applicant in writing, setting forth the specific reasons for such denial, and advising the applicant that it may appear before the Board of the Authority at its next scheduled meeting and present testimony or other evidence on behalf of its application. At such board meeting, the Board of the Authority may affirm, reverse, or modify the decision of the Executive Director.

19:75-9.3 Application for major variance

(a) An application for a major variance shall be in writing and set forth the following:

1. Name and address of applicant;
2. Narrative statement describing exact nature of variance requested, the special reasons why such variance should be granted, and the impact such variance, if granted, will have on the neighborhood and traffic conditions;
3. Citation of specific subchapters from which variance is sought;
4. Period for which variance is requested, if not permanent; and
5. Legal description and scale drawing of property for which variance is requested, if applicable.

(b) All applications shall be filed in original and eight (8) copies with the Board of the authority, and an additional copy with the police department of the municipality or municipalities affected by the variance. Proof of service of the application on the police department or departments so affected shall be filed with the Authority by way of affidavit or certified mail return receipt requested prior to a determination on the application.

19:75-9.4 Hearing procedure for major variances, bus parking lot approvals, additional activity center on-site approvals, and other hearings

(a) All applications for major variances (N.J.A.C. 19:75-9.1(b) and 9.3), bus parking lot approvals (N.J.A.C. 19:75-6.2) and additional site approvals (N.J.A.C. 19:75-4.3) shall be reviewed by the Development Division of the Authority.

1. Within 30 days following receipt of application, the Authority, through the Development Division, shall notify the applicant in writing by certified mail regarding the completeness of the filing. The Authority may declare the application to be complete for filing or shall notify the applicant of specific deficiencies. The Authority shall, within 15 days following the receipt of additional information to correct filing deficiencies, notify the applicant of the completeness of the amended filing, or shall specify the unaddressed deficiencies. An application shall not be considered duly filed until it has been declared complete by the Authority.

2. The Development Division of the Authority shall recommend approval or disapproval of all completed applications to the Executive Director who shall grant or deny the application within 15 days of the recommendation of the Development Division. The determination of the Executive Director, setting forth the reasons for the grant or denial of the application, shall be forwarded forthwith to the applicant by certified mail, return receipt requested.

3.-7. (No change.)

(b) All approvals shall be conditioned where applicable upon compliance with the following:

1. Municipal zoning or planning board approval;
2. Maintenance of the affected property, if any, in the condition set forth in the application or any amended application approved by the Authority;
3. On-site posting in a conspicuous place of Authority-approved bus routes and regulations;
4. Submission of reports on forms supplied by the Authority, at the Authority's request.

(c) (No change.)

**SUBCHAPTER 10. SEVERABILITY**

19:75-10.1 (No change.)

OFFICE OF ADMINISTRATIVE LAW NOTE: Diagram A, Bus Routes for Casinos Entering and Departing Atlantic County, and Diagram B, Bus Routes for Casinos Entering and Departing Atlantic City, referenced and made a part of this chapter, are not reproducible in the New Jersey Administrative Code. Copies of the diagrams may be obtained from ACTA, 1625 Atlantic Avenue, Atlantic City, New Jersey 08401, or from the Office of Administrative Law, Quakerbridge Plaza, Building 9, CN 301, Trenton, New Jersey 08625.

**ENVIRONMENTAL PROTECTION****(a)****DIVISION OF ENVIRONMENTAL QUALITY****Control and Prohibition of Air Pollution by Volatile Organic Substances****Adopted Amendments: N.J.A.C. 7:27-16.1 and 16.3**

Proposed: August 1, 1988 at 20 N.J.R. 1866(a).

Adopted: December 30, 1988 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Filed: January 4, 1989 as R.1989 d.62, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3 and N.J.S.A. 26:2C-1 et seq., particularly N.J.S.A. 26:2C-8.

DEP Docket Number: 025-88-07.

Effective Date: February 6, 1989.

Expiration Date: Exempt under 42 U.S.C. 7401 et seq.

**Summary of Public Comments and Agency Responses:**

The New Jersey Department of Environmental Protection (the Department) is adopting amendments to N.J.A.C. 7:27-16, "Control and Prohibition of Air Pollution by Volatile Organic Substances" to further regulate emissions of volatile organic substances (VOS) to the atmosphere. These amendments require gasoline loading facilities that load more than six million gallons per year into marine delivery vessels to do so using vapor control equipment. These amendments were proposed on August 1, 1988 at 20 N.J.R. 1866(a).

The Department received several comments concerning the feasibility of the February 28, 1990 compliance date contained in the proposal in light of the necessity for United States Coast Guard approval before the equipment necessary for compliance can be installed and the subsequent Coast Guard determination that case by case review of these alterations would not be provided until uniform safety rules are finalized. These Federal rules are not expected to be finalized until February of 1990, the same month compliance with this rule was proposed. In light of the safety concerns involved, the Department has reserved that portion of the proposal related to the compliance deadline pending the outcome of motion(s) to be made to the court in the case of *American Lung Ass'n. v. Kean*, Civ. No. 87-288, to determine the most appropriate compliance deadline. The decision on this motion is expected in the near future at which time the Department will take those steps necessary to adopt an appropriate schedule. The amendments to N.J.A.C. 7:27-16 are to fulfill commitments made by the Department in the revisions to the 1980 State Implementation Plan (SIP) for Attainment and Maintenance of the National Ambient Air Quality Standard (NAAQS) for Ozone and Carbon Monoxide. This commitment was made as part of the Department's continuing effort to attain the NAAQS for ozone.

A public hearing was held at the New Jersey Record Storage Center in Trenton, New Jersey, on September 8, 1988 to provide interested parties the opportunity to present testimony on the proposed amendments. The comment period closed on September 12, 1988. The Department received written testimony from 12 persons and 12 persons presented comments at the public hearing.

**7:27-16.1 Definitions**

**COMMENT:** One commenter stated that a separate definition should be given for marine delivery vessels in order to avoid confusion as to which provisions apply to marine vessels.

**RESPONSE:** The Department agrees and has included a separate definition for marine delivery vessels.

**COMMENT:** One commenter asked to have ethane exempted from the definition of VOS since it is negligibly photochemically reactive.

**RESPONSE:** The United States Environmental Protection Agency (USEPA) does allow for the exemption of ethane from the definition of VOS. However, the Department has chosen not to do so. The Department believes the transport of ozone and ozone precursors from upwind sources is an important factor in ambient ozone concentrations. Therefore, although ethane may not react to form ozone in the immediate vicinity of the emission source, it will somewhere downwind. This contributes to another area's ozone concentration level. For this reason, no exemption has been made.

**7:27-16.3 Transfer operations**

**COMMENT:** Several commenters cited the high levels of ozone present in New Jersey this past summer and the environmental damage caused by these levels. They indicated strong support of the proposed amendments which should help alleviate the ozone problem.

**RESPONSE:** The Department is also concerned about the many exceedances of the ozone standard which occurred this summer. The ozone control strategies committed to in the SIP are being implemented as quickly as practicable, including the marine loading of gasoline. The Department appreciates the support for its proposal.

**COMMENT:** The SIP for New Jersey should be revised. The ozone problem should receive further study, including updating the VOS inventory, before control options are implemented. There are more cost effective measures than vapor recovery for marine loading of gasoline for controlling ozone, and these should be implemented prior to any requirements on marine loading.

**RESPONSE:** The more cost effective measures identified in the SIP have already been implemented. There are no other known measures more cost effective than marine vapor recovery that have not been adopted in New Jersey. Commenters also had none to suggest.

The Department is constantly monitoring advances in air pollution control in other states and countries. Therefore, the State benefits from the studies performed by other agencies. This monitoring has not uncovered any previously unknown control measures. In addition, updating the VOS emission inventory is presently being performed and has not indicated any new sources for control.

The Department, in its effort to attain the NAAQS for ozone, has regulated larger emission sources which from a technical and economic feasibility standpoint are most reasonable. As the control of further sources becomes necessary to attain the ozone standard, technical and economic difficulty necessarily increases. This measure and others still in the proposal process were identified in the SIP as "extraordinary" and are necessary since, even after all reasonable measures have been exhausted, there are still exceedances of the NAAQS for ozone in New Jersey.

Since there are no known measures to take the place of marine vapor recovery, revising the SIP is not feasible. The Department is adopting marine vapor recovery requirements because the associated reduction in VOS emissions is necessary to show progress toward attainment of the NAAQS for ozone.

**COMMENT:** One commenter stated that these amendments should not be adopted at this time because in a separate proposal the Department has suggested lowering the Reid Vapor Pressure (RVP) of gasoline. If that proposal is adopted, the emission reductions from this control strategy will be greatly reduced and it will not be cost effective.

**RESPONSE:** The regulation of the marine loading of gasoline and of the RVP of gasoline are both necessary steps in showing progress toward the attainment of the NAAQS for ozone. Each proposal must stand on its own merits, independent of other measures.

Nonetheless, reductions in the VOS emissions from marine vessels will occur with the use of marine vapor recovery even if the RVP of gasoline is lowered. The emission factors used to develop the inventory in the proposal were conservative. Emission factors as high as 2.4 pounds per 1,000 gallons of gasoline loaded for tankers and 4.0 pounds per 1,000 gallons of gasoline loaded for barges are given in the USEPA report "Background Information on Hydrocarbon Emissions from Marine Terminal Operations Volume I: Discussion". Lower factors of 1.8 and 3.4, respectively, were used. This would tend to mitigate any changes in VOS emissions that would occur because of a reduction in RVP. Such reduction would not be expected to reduce the actual emissions of VOS much below the projected emissions. Thus, there would be little effect on the cost effectiveness.

**COMMENT:** The Department's efforts are aimed more toward avoiding sanctions than toward reducing ambient ozone concentrations.

**RESPONSE:** Although sanctions against the State are a real and present threat, they are not the overriding reason behind the Department's efforts. Ambient ozone has been shown to be injurious to human health, crops, and property. The Department has identified control measures to reduce the concentration of ozone in New Jersey in order to alleviate possible harm to State residents, their property, and the environment.

**COMMENT:** The contribution of emissions from the barge loading of gasoline is small, less than one percent of VOS inventories, and is generally blown out to sea by prevailing winds. The emissions from this source have been greatly overestimated in the proposal, and are more

on the order of 2600 tons per year. The overestimation was caused by incorrect information from the United States Army Corps of Engineers.

**RESPONSE:** The United States Army Corps of Engineers sent revised data on the marine loading of gasoline to the Department. The original data for 1986 had indicated that 4.1 billion gallons of gasoline had been loaded into barges in New Jersey, and none had been loaded into tankers. The new data indicates that 4.4 billion gallons of gasoline were loaded into barges, and 1.2 billion gallons were loaded into tankers. These values increase the emissions estimate from 6,950 to 8,550 tons of VOS per year.

The emissions from marine loading of gasoline occur in the two areas that show the highest number of exceedances of the ozone standard. These areas are the northern New Jersey-New York metropolitan area and the Philadelphia-Trenton metropolitan area. Prevailing winds generally move in a northeasterly direction, blowing pollutants into central New Jersey and Connecticut, and these areas have recorded many exceedances of the ozone standard.

In addition, the report "Impact of Marine Hydrocarbon Vapor Emissions on Air Quality", submitted by the commenter in support of the emission contribution contentions, was analyzed by the Department's Bureau of Air Quality Planning and Evaluation and found to contain basic flaws. The VOS emissions from marine loading of gasoline may be only 0.2 percent of the inventory in the Philadelphia area and 2.5 percent in the New York/New Jersey port area, but the reductions possible are 5 percent and 11 percent of those needed to demonstrate attainment of the NAAQS for ozone in the respective areas. The dispersion modeling used in the report was applied to the VOS concentration. The relationship between VOS and ozone is non-linear, and therefore VOS concentration alone is insufficient to predict ozone concentrations. Lastly, the ozone monitors chosen in the meteorological analysis were only 10 to 20 miles from the ports. Since it takes time for VOS to react to form ozone, it is more likely that the maximum impact occurs 50 to 100 miles downwind of the source.

**COMMENT:** The assertion in the proposal that no tankers are loaded with gasoline in New Jersey is incorrect. The inclusion of tankers will greatly increase overall costs and reduce the cost effectiveness of this control strategy.

**RESPONSE:** Revised information received from the United States Army Corps of Engineers shows that tankers have been loaded with gasoline in New Jersey. The original data indicated that no such loading occurred in the State. Based on the revised data, 21 facilities loaded gasoline into tankers in 1986. Since all of these facilities also loaded gasoline into barges, the majority of them are already subject to the rule because of that activity. Two facilities loaded less than six million gallons of gasoline into barges, but more than six million gallons into tankers.

The overall cost may increase somewhat, but so will the overall reduction in VOS emissions. Approximately 1,050 tons of emission reductions can be anticipated from marine control of tanker loading. The cost effectiveness for the retrofitting of tankers has been estimated at \$2,100 per ton of VOS removed, based on the National Academy of Sciences (NAS) study "Controlling Hydrocarbon Emissions from Tank Vessel Loading." This is within the same range as the costs cited in the proposal.

**COMMENT:** Pennsylvania should adopt a similar rule for its marine facilities.

**RESPONSE:** A control strategy is always more effective when it is implemented on a regional or national basis. Pennsylvania has a commitment in its SIP to adopt a rule on the marine loading of gasoline. However, this has not yet occurred.

**COMMENT:** The overriding consideration in requiring marine vapor recovery should be safety. National uniform standards are needed to promote safety. Case by case review of the equipment needed at facilities and on ships will not ensure the high degree of uniformity needed and cannot be completed in the designated timeframe. The United States Coast Guard (USCG) has stated that it will not approve systems until the final safety rules are adopted.

**RESPONSE:** The USCG has the ultimate authority to ensure safety at marine facilities and marine vessels. The Department is not attempting to usurp that authority. When the safety standards being developed by the USCG are finalized, the questions of safety and national uniformity should be answered.

As stated earlier, the Department is working with all parties to determine the most appropriate compliance date to assure safety and has reserved the portion of the rule which specifies the date when compliance will be required pending the decision by the United States District Court. The Department does not intend to require unsafe practices. However, it is making every effort to assure that the necessary reductions in VOS emissions are achieved as quickly as is safely practicable.

**COMMENT:** The USEPA should work with the USCG to develop a Control Technique Guideline (CTG) for this source category. Only then should requirements for marine vapor control be implemented by states in nonattainment with the NAAQS for ozone using the CTG as a basis.

**RESPONSE:** The Department has frequently requested that USEPA take a national stance on this source category. However, it is the State's responsibility to attain the NAAQS for ozone and it cannot wait indefinitely for the USEPA to act. The commenter has suggested one approach; however, the USCG may and has proceeded with the technical aspects within its expertise without input of the USEPA on air pollution concerns. The recommendations of the Coast Guard will be followed.

**COMMENT:** Several commenters stressed the importance of national standards for both safety and vapor control requirements in order to prevent fires and other hazards. The national standards for safety being developed by USCG must be in place before the design and construction of control systems is begun.

**RESPONSE:** National standards for this control equipment are very important and the Department has been supporting such standards for years. Safety is one of the important aspects of marine vapor control for emission reductions, since the potential exists for a catastrophe. Terminals and vessels cannot install equipment until it is approved by the USCG, and the USCG will not approve equipment until final safety regulations are adopted. It follows that construction cannot begin until after that. The final compliance date determined to be appropriate will take these factors into account.

**COMMENT:** No system of marine vapor recovery is safer than operating without it, according to one commenter. There is an increased risk of explosion, fire, and over- or under-pressurization of the vessel. One half of all marine vapor recovery systems in operation worldwide have had accidents. Even with the USCG rules, safety is not guaranteed.

**RESPONSE:** The operation of any control equipment has a measure of risk associated with it. The standards for safety that the USCG is developing will minimize this risk. The standardization this will promote will help ensure safe operation. However, the human element can never be standardized.

As to the assertion that one half of all marine vapor recovery systems in operation worldwide have had accidents, the Department has no information to that effect and the commenter supplied none. There is only one incident known to the Department, and it occurred in 1983 in Louisiana and involved the loading of acrylonitrile.

**COMMENT:** No one in government or the court system is willing to assume the responsibility and liability for ordering terminals to engage in such an unsafe and dangerous venture.

**RESPONSE:** The USCG has recognized the intent of the states to regulate emissions of VOS from marine loading and is working to assure the safety aspects of recovery equipment. Louisiana has adopted a rule on marine loading and the Bay Area Air Quality Management District in California is preparing to adopt a rule. Other states have commitments in their SIPs to regulate this source category. New Jersey is one of several jurisdictions requiring the use of vapor recovery equipment during loading operations and is confident that with USCG involvement, all safety concerns will be adequately addressed.

**COMMENT:** Detonation arrestors of large diameter have not been tested yet. Other equipment, such as gauging and alarm devices must be developed, tested, and approved. Development and testing should be pursued to advance the state of the art in these areas.

**RESPONSE:** Such testing is underway. According to testimony from USCG, large detonation arrestors should be approved concurrent with its issuance of final safety requirements by the USCG. Other types of equipment have been, or will shortly be, available for use in vapor recovery systems.

**COMMENT:** The International Maritime Organization should be the forum for developing uniform standards of performance for marine vapor recovery equipment. In addition, USCG should be required to approve any air pollution control rules submitted to the USEPA in a SIP.

**RESPONSE:** The USCG has no authority in the area of air pollution control. This jurisdiction belongs to the USEPA. Interaction does occur between these two Federal agencies, and between the Federal agencies and the states. Comments on the rule were received from USCG and were carefully considered.

The USCG safety rule to be proposed affects marine vessels that load in the United States. There may be a few that are from other countries, but the vast majority are American vessels. The USCG is the appropriate authority for developing safety standards for use on waterways of the United States. Should the International Maritime Organization have additional information not currently available to the USCG, the Depart-

ment would encourage their involvement in the USCG rulemaking process.

COMMENT: Many commenters requested that the compliance date for these amendments be postponed until after the USCG adopts safety rules for marine vapor recovery systems, and that the Department should go to the Federal District Court to obtain an extension or to request that this control measure be dropped. Two commenters stated that because of its obligations under the Clean Air Act and the Federal court order, the Department should not delay by waiting for the USCG, while another stated that the Chemical Transport Advisory Committee report in February 1989 will provide sufficient information for safety determinations.

RESPONSE: The Department realizes that the approval of the USCG must be obtained prior to the commencement of construction. As previously stated, to assure that all concerns are adequately addressed, the compliance date of this rule is not being adopted at this time. Based on the outcome of motion(s) before the United States District Court for the District of New Jersey, the Department will adopt the compliance deadline which is determined to be appropriate.

COMMENT: Requests were made to have the compliance deadline extended by one to three years. Two commenters stated that the compliance schedule should remain as proposed. Reasons given for needing an extension included time necessary for the design, fabrication (up to one year) and installation of the custom equipment needed for each facility, time to acquire necessary financing, and time to provide the extra training and certification needed for safe operation of new equipment. Additionally, marine vessels will need to perform retrofits during their normal twice every five year dry dock schedule. Commenters stated that the training period in particular has not been taken into account.

RESPONSE: The need for time to attain compliance with the provisions for marine loading was considered. The major factors are training, certification, and the fabrication of equipment. The design phase can begin prior to the issuance of final safety requirements, with a short period needed to confirm that the design meets the final requirements. Funding can be obtained in the year prior to the issuance of the safety requirements. Marine vessels that are not in dedicated service can schedule retrofitting during normal dry docking. Dedicated vessels can be retrofitted on a rotating basis until all are completed. Any vessel can load cargo other than gasoline until after the retrofit has occurred. The time assigned to each of these factors will be reevaluated to arrive at an appropriate final compliance deadline.

COMMENT: A nine to 12 month period is needed for Departmental and USCG review of permit applications. Permits necessary include air permits, possible RCRA permitting, wetlands, construction, tank, local and fire marshall permits. These permits must be obtained prior to construction and industry may not be able to get them before mid-1989.

RESPONSE: Many of the necessary permits can be applied for simultaneously. The application for a permit for air pollution control can be submitted prior to the safety review. The Department is interested in the efficiency of the system. Any subsequent changes affecting safety and not affecting efficiency will have no bearing on the air pollution control permit.

The USCG has stated that two to three months should be sufficient for permit approval under its adopted safety regulations. RCRA permitting is required for a hazardous waste and gasoline vapor is not classified as such. Local permits for things such as construction have always been obtained by facilities affected by a rule and the Department has not heard of any application taking an appreciable amount of time.

COMMENT: Implementation of this control strategy on the proposed schedule will force barge loading of gasoline out of the State by making New Jersey ports less competitive with those in other states.

RESPONSE: At the present time, there is an overcapacity in the barge industry. Thus, the competition for contracts is high. The use of vapor control equipment may reduce the number of vessels willing to load in New Jersey. However, such vessels willing to load in New Jersey will have an advantage in obtaining contracts in the State, so there will still be a sufficient number to handle demand. Also, the gasoline to be shipped is in some cases refined in the State. The ports will still be needed as points from which to ship this gasoline.

COMMENT: The cost of implementing marine vapor recovery may be three times higher than indicated in the proposal, up to \$7,800 per ton of VOS removed. A facility loading barges and tankers will cost \$7.5 million to retrofit, not \$1.7 million as given in the proposal.

RESPONSE: The cost figure of \$7.5 million appears to be from the NAS study. It is for a hypothetical terminal serving tankers and barges. An annual throughput was not given for this model facility. Costs given in the NAS study for the large Texas facility would be closer to the upper

limit for costs for a New Jersey facility loading both tankers and barges. The cost given for such a facility is \$1.9 million, in 1987 dollars. This is close to the \$1.7 million given in the proposal. It does not include costs for vessels.

COMMENT: The proposal cites the economic impact on terminals but not on refineries. Refineries must be taken into account in calculating the cost of the rule change.

RESPONSE: In the proposal, the term terminal was used to indicate any type of facility form which gasoline may be loaded into marine vessels. All types of facilities were considered in the economic impact statement, including refineries.

COMMENT: One commenter stated that small facilities that may be affected by the ozone season provision cannot afford marine vapor recovery systems. The rule therefore favors large, well financed companies.

RESPONSE: Systems which can be placed on barges are available and are much less expensive than facility based controls. Small facilities could utilize such barges, reducing their need for costly onshore equipment.

COMMENT: Maintenance costs on vapor recovery systems are high. Equipment deteriorates more quickly with intermittent use. This will be a further financial burden on small facilities.

RESPONSE: Maintenance costs will depend, in part, on the type of control chosen. It is therefore difficult to determine how high these costs will be. The NAS study estimated maintenance costs to be between \$28,000 and \$79,000 per year. The cost of maintenance was included in the annual cost estimates in the proposal.

COMMENT: When a barge is retrofitted for vapor recovery out of sequence with its normal dry dock schedule, \$62,500 is added to the cost, according to one commenter.

RESPONSE: The additional cost cited for retrofit out of sequence with normal dry docking is mostly for lost revenue. Only \$10,000 of the cited cost is for additional service required. The cost of lost revenue is applicable only if the barge could have found work during the affected time period. Because of competition within the industry, a barge that performs its retrofit early will be in a good position to pick up more work, thus helping to offset any additional costs.

COMMENT: One commenter stated that there is equipment for marine vapor recovery available and in use. Thus, the proposal can proceed on the given timetable. Another commenter stated that systems cited as in use and effective utilize dedicated vessels. Also, many of these systems are not working, are not working properly, or were not designed to control emissions, but to simply vent them away from the dock.

RESPONSE: The equipment approved and in use has been approved by the USCG on a case by case basis. The USCG has stated that this will no longer be done. It has also been stated that almost all of the systems already approved are not directly transferable to another facility because of the use of a dedicated vessel or other reason. The Department knows of systems that are working properly to control emissions. Other systems were not considered.

COMMENT: Three commenters stated that a control efficiency of 95 percent is too high. Two commenters suggest 90 percent; one said a wider variety of control equipment can be used, and the other to allow for some leaks without the need for constant, costly repairs. One commenter stated that based on California's experience, New Jersey should increase the required control efficiency to 99.8 percent. Two other commenters supported the proposed control efficiency; one, as long as it is consistent with USCG requirements, and the other because his company makes an approved system which is 95 percent efficient.

RESPONSE: The control efficiency has been maintained at 95 percent. The California experience consists mostly of one tanker at one facility. This is not sufficient evidence to establish a control efficiency of 99.8 percent for existing sources. However, it does show that better than 90 percent can be obtained.

COMMENT: The reference to N.J.A.C. 7:27-16.3(d) in N.J.A.C. 7:27-16.3(e)4 should be dropped. The provisions of (e)4 are sufficient, and reference to (d) is redundant.

RESPONSE: The reference to N.J.A.C. 7:27-16.3(d) is not redundant. It prohibits the loading of gasoline into a marine vessel at a location along the waterfront other than a gasoline loading facility.

COMMENT: The use of a closed loading system should not be required. It can increase the risks of spills and over- and under-pressurization of vessels.

RESPONSE: A closed system is not necessarily required for loading. The provisions in N.J.A.C. 7:27-16.3(e)4 simply require a system that is 95 percent efficient in capturing and removing VOS.

COMMENT: All facilities loading gasoline into marine vessels should be subject to the requirements of these amendments.

RESPONSE: At the present time the costs for a facility loading less than six million gallons of gasoline per year can be very high. There are very few small facilities loading less than six million gallons of gasoline per year in the State and their VOS emissions are relatively insignificant. Therefore, they have been exempted from the rule based on their lack of cost effectiveness.

COMMENT: A method of determining capture efficiency must be specified.

RESPONSE: The Subcommittee on Marine Vapor Recovery of the Chemical Transport Advisory Committee (CTAC) is presently studying how capture efficiency should be defined and tested. CTAC's recommendations will be submitted to the USCG for final review. When a final decision is reached by USCG, the Department will use their suggestions in developing revisions to Air Test Method 3, N.J.A.C. 7:27B-3.

COMMENT: One commenter stated that "vapor tight" parameters should be established to ensure that the vapor tight provisions are both reasonable and enforceable. Another commenter claimed that it is impossible to have a vapor tight marine vessel.

RESPONSE: As part of determination on capture efficiency, CTAC is going to determine the general vapor tightness of marine vessels. This information will be considered by the Department to make appropriate changes to the rule, such as the overall control efficiency, and to develop test methods for vapor tightness. At this time, the Department is not making N.J.A.C. 7:27-16.3(m) applicable to marine vessels and has deleted reference to that provision in N.J.A.C. 7:27-16.3(e)4.

COMMENT: A clear reference must be made to the fact that marine vapor recovery systems must meet U.S. Coast Guard requirements.

RESPONSE: It is not the practice nor the responsibility of the Department to cite the requirements of other agencies in rules. The Department cannot determine if equipment meets the requirements of other agencies. Application for an air permit from the Department does not exempt the applicant from the need to comply with other rules of the Department or the rules of any other state, local, or Federal agency.

COMMENT: N.J.A.C. 7:27-16.3(o) should exclude marine vessels because it will be impossible to effect repairs and obtain USCG approval of such in 15 days. Also, the Department does not have the authority to require this.

RESPONSE: Marine vessels are already excluded from N.J.A.C. 7:27-16.3(o) because they are not subject to N.J.A.C. 7:27-16.3(i).

COMMENT: The emissions from the motors of pleasure boats, as well as those from tankers and barges, should have standards which must be met.

RESPONSE: The requirements of these provisions do not apply to the emissions from the engines of marine vessels. They apply to the emissions of VOS vapors from the cargo tanks of barges and tankers when they are loaded with gasoline.

The emissions from engines of pleasure boats are not under consideration for control. It is the view of the Department that such emissions are small and their control is not called for at the present time.

COMMENT: Facility throughput data is proprietary business information. Therefore, it should not be required to be submitted to the Department. In addition, emission information will be given to the Department in the Annual VOS Emissions Survey, and throughput information is unnecessary.

RESPONSE: The Department handles confidential business information every day. There are established procedures for dealing with such information. The Department has the right to information it deems necessary for implementing and enforcing its rules.

COMMENT: The Department must be sure it has sufficient resources to implement and enforce these amendments to ensure that the indicated emissions reductions will be achieved.

RESPONSE: The number of affected facilities is small. It is not expected to add considerably to the Department's permitting or enforcement activities.

Full text of the adoption follows (additions to the proposal indicated in boldface with asterisks \*thus\*; deletions from the proposal indicated in brackets with asterisks \*[thus]\*).

7:27-16.1 Definitions

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

...  
 "Delivery vessel" means any mobile storage tank including, but not limited to, tank trucks\*[,]\* \*or\* railroad tank cars\*[, barges, or tankers]\*.  
 ...

**"Marine delivery vessel" means any mobile storage tank designed to move on water, such as barges or tankers.\***

7:27-16.3 Transfer operations

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

(e) No person shall cause, suffer, allow, or permit the transfer or loading of gasoline or any substance into any gasoline vapor laden delivery vessel **\*or marine delivery vessel\*** at a gasoline loading facility unless such facility is equipped with and operating a control apparatus in accordance with the following provisions:

1.-3. (No change.)

4. For facilities transferring or loading gasoline into marine delivery vessels, only (d) above, **\*and\*** (k) **\*[and (m)]\*** below, and the following shall apply:

i. Effective **\*[February 28, 1990]\* \*(date to be determined)\***, any facility with an annual throughput of 6,000,000 gallons (22,710,000 liters) or greater for loading gasoline into marine delivery vessels shall be equipped with and operating a vapor control system which reduces the total emissions of VOS to the outdoor atmosphere by no less than 95 percent by weight.

ii. Effective **\*[February 28, 1990]\* \*(date to be determined)\***, any facility loading 60,000 gallons (227,100 liters) of gasoline or greater into marine delivery vessels in a single day between May 1 and September 15 shall be equipped with and operating a vapor control system which reduces the total emissions of VOS to the outdoor atmosphere by no less than 95 percent by weight.

iii. Effective **\*[February 28, 1990]\* \*(date to be determined)\***, any marine delivery vessel receiving gasoline at a facility subject to the provisions of (e)4i or ii above shall have vapor collection piping and connections which route displaced vapors to the control apparatus.

(f)-(m) (No change.)

(n) (No change in text.)

(o) Any delivery vessel subject to the provisions of (i) above found in violation of (k) or (m) above shall be repaired within 15 days and shall be recertified.

(p) (No change in text.)

(q) Any person subject to the provisions of (e)4 above shall submit yearly documentation of the annual throughput of each gasoline loading facility to the Department by June 1 of the calendar year following the year for which the documentation is valid. The annual throughput of gasoline shall be based on the period January 1 through December 31.

(r)-(u) (No change.)

**(a)**

**DELAWARE AND RARITAN CANAL COMMISSION  
 Delaware and Raritan Canal State Park Review Zone  
 Adopted New Rules: N.J.A.C. 7:45-1, 2, 3, 4, 5, 7, 8,  
 11 and 12**

Proposed: January 4, 1988 at 20 N.J.R. 23(a).

Adopted: January 3, 1989 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection, and Delaware and Raritan Canal Commission, Benjamin B. Kirkland, Chairman.

Filed: January 4, 1989 as R.1989 d.61 **with substantive and technical changes** not requiring additional public notice and comment (N.J.A.C. 1:30-4.3) **and with proposed N.J.A.C. 7:45-6, 9 and 10 not adopted.**

Authority: N.J.S.A. 13:13A-10.

DEP Docket Number: 060-87-11

Effective Date: February 6, 1989.

Expiration Date: February 6, 1994.

## ADOPTIONS

### Summary of Public Comments and Agency Responses:

The Department of Environmental Protection (Department) received more than 200 comments from approximately 48 commenters on the proposed new rules before the close of the public comment period on April 6, 1988. Verbal comments were received from approximately 20 people who attended public hearings in Stockton, New Jersey on January 21, 1988 and in South Brunswick Township on February 5, 1988. Written comments were received from public interest groups, realtors, engineers, developers, local governments, State agencies and individuals.

The new Delaware and Raritan Canal State Park Review Zone Rules were proposed on January 4, 1988 at 20 N.J.R. 23(a). The proposal specified the procedures, standards and scope of review by the Delaware and Raritan Canal Commission (Commission) to implement the Commission's responsibility under the Delaware and Raritan Canal State Park Law of 1974 (Act), N.J.S.A. 13:13A-1 et seq., to review public and private projects that might have an adverse effect on the Delaware and Raritan Canal State Park (Park). The Department proposed to adopt rules that had expired and expand the scope of the Commission's review to include stream corridor impact and traffic impact.

In general, provisions addressing Definitions (N.J.A.C. 7:45-1.2), Stream Corridor Impact (N.J.A.C. 7:45-6), Visual and Natural Quality Impact, (N.J.A.C. 7:45-8), and Traffic Impact (N.J.A.C. 7:45-9) received the most comments. However, comments covered the range of issues raised in the proposal.

Because of the nature of the comments received, the Department is not currently prepared to adopt the rules pertaining to Stream Corridor Impact (N.J.A.C. 7:45-6), Traffic Impact (N.J.A.C. 7:45-9), and Noise Impact (N.J.A.C. 7:45-10). The Department has changed certain of the rules as necessitated by the non-adoption of these proposed subchapters.

#### 7:45-1.2 Definitions

COMMENT: The Department should lower the criterion for a major project in the A zone from 10,000 square feet to 5,000 square feet of impervious cover.

RESPONSE: The requirement for 10,000 square feet of impervious cover has worked well and, as no justification was provided for a 5,000 square foot criterion, will be retained.

COMMENT: Projects in the B zone should be major as soon as they involve one-half acre of impervious area instead of one acre.

RESPONSE: The Department is satisfied that one acre is consistent with the Master Plan and is adequate to assure review of those projects in the B Zone that will have the potential to cause an adverse impact on the Park. No justification was provided for a one-half acre criterion.

COMMENT: The phrase "100 year flood line" should be defined.

RESPONSE: The Department agrees and has included the following definition, in the adoption at N.J.A.C. 7:45-1.2 to promote certainty. "100 year flood line" means the line which is formed by following the outside boundaries of the area inundated by a 100 year flood. A 100 year flood is estimated to have a one percent chance, or one chance in 100, of being equalled or exceeded in any one year.

COMMENT: Define "Certificate of Approval" as used in subchapter 3.

RESPONSE: The Department does not agree that a specific definition is necessary. The meaning of "Certificate of Approval" is clear from the context in which it is used.

COMMENT: Define "sufficient information" as used in N.J.A.C. 7:45-2.1.

RESPONSE: The Department does not agree that a definition is necessary. The meaning of "sufficient information" is clear from the context in which it is used, that is, information sufficient for the Commission's adequate review and consideration of the project.

COMMENT: Define "proposed watersheds" as used in N.J.A.C. 7:45-5.2(b)1.

RESPONSE: The Department agrees to clarify N.J.A.C. 7:45-5.2(b)1 by eliminating "and proposed." It will read on adoption: "Existing watersheds".

COMMENT: Define "feeder canal" as used in the definition of "canal" in N.J.A.C. 7:45-1.2.

RESPONSE: The Department will delete the term "feeder canal" from the definition of "canal."

COMMENT: A number of requests were made to provide more definitions than are proposed in N.J.A.C. 7:45-1.2. Included among the words or phrases for which commenters requested definitions are:

harmful	unobtrusive
dominant feeling	dense development
squeezed	unique

## ENVIRONMENTAL PROTECTION

harmful impact	adequate screening
relationships	reasonable height & scale
a visual relationship	harmonize
similar major road	water quality
polluted	new construction
impeded	adversely impact
compatible	stream
adverse	natural quality impact

RESPONSE: The Department has used all of these words in a common sense manner, using their plain meaning and assuming that the definitions as found in standard American dictionaries will be understood as being applicable. The Department recognizes, however, that the reason definitions are requested for many of these terms and phrases is because commenters believe that it is advantageous and possible to have rules that are totally free from subjective decisions. The Department believes that it has succeeded in striking a balance between providing objective guidelines for reviewing applications and recognizing that ultimately many decisions must be made at least partly on the basis of the merits of an individual, unique case.

#### 7:45-1.3

COMMENT: The scope of review set forth in N.J.A.C. 7:45-1.3(a) needs to be clarified. As proposed subsection (a) provides "... the Commission will review governmental and private projects, and State permits for land-use activities, that impact on the Park." This differs from the expired rules which stated, "which have the potential to adversely affect the park" and N.J.S.A. 13:13A-3f which in its definition of "review zone", states in part, "in which proposed "projects" . . . may cause an adverse impact on the park . . . ." The proposed change in scope of review from projects which have the potential to adversely affect the Park to a review of projects that impact on the Park is beyond the statutory authority of the Department.

RESPONSE: The Department agrees to clarify the scope of review by deleting from N.J.A.C. 7:45-1.3(a) the phrase, "and State permits for land-use activities," and insert thereat "which have the potential to cause an adverse impact on the park including drainage, aesthetic and ecological factors. In addition, the Commission shall approve all State actions". By this change, N.J.A.C. 7:45-1.3(a) is clarified to apply to governmental projects, private projects and State action. The scope of review for governmental and private projects is consistent with N.J.S.A. 13:13A-3f and for State actions is consistent with N.J.S.A. 13:13A-14b. The scope of review for State permits is continued to be addressed at N.J.A.C. 7:45-2.9.

COMMENT: Since the Commission reviews private and governmental projects and State actions for conformity with the objectives of the Master Plan for the Park, the objectives of the Master Plan should be included in the rules.

RESPONSE: The Department has clarified the scope of review by including the objectives of the Master Plan at N.J.A.C. 7:45-1.4.

#### 7:45-2.2

COMMENT: The Commission should not wait to begin its review of a private project until after the project has been approved by the municipal approving agency as proposed in N.J.A.C. 7:45-2.2(a) and (d). Generally, a number of applications are submitted to various agencies such as the county planning board, soil conservation service, and the Commission concurrently with a site plan application. Comments from agencies except the Commission are frequently factors in the municipal review process and are referenced in approval conditions. A strict sequential review of these various applications would significantly lengthen the processing period. The municipal agency may be reluctant to proceed with an approval without benefit of Commission comments and the developer would be unaware of any revision necessitated by the Commission. As a result, a formal re-submission to the municipality could be required. It is suggested that N.J.A.C. 7:45-2.2(a) and (d) be revised to allow simultaneous review by the Commission and the municipal approving agency.

RESPONSE: The application procedure in N.J.A.C. 7:45-2.2(a) implements the provisions of N.J.S.A. 13:13A-14C which provides in pertinent part that "[t]he initial application for a proposed project within the zone shall be submitted by the applicant to the appropriate municipal reviewing agency. If approved by the agency, the application shall be sent to the commission for review." However, the Department recognizes the concerns raised by the comment. Consequently, both the expired rules and the proposed rules now at N.J.A.C. 7:45-2.2(b) include provisions allowing the submission of applications and pre-application discussions with the Commission before municipal approval is obtained. Although the Act anticipates that the Commission will review an application only upon municipal approval, the rules at N.J.A.C. 7:45-2.2(b) provide for

early submission and discussions thereby establishing an adequate procedure for coordination of the various review and approval agencies.

COMMENT: N.J.A.C. 7:45-2.2(a) and (d) both state that no application will be reviewed by the Commission until it has municipal approval. However paragraph (b)1 allows the submission of applications prior to municipal approval. Subsection (b)1 is contradictory and should be deleted.

RESPONSE: The Department does not believe the provisions are contradictory. N.J.A.C. 7:45-2.2(a) requires submission of an application to the Commission; subsection (d) precludes review of an application by the Commission prior to municipal approval; paragraph (b)1 provides for early submission of an application but not review by the Commission; and paragraph (b)2 provides for pre-application submission for discussion with the Commission. The Department has clarified the provisions by adding the phrase "for staff review" at the end of N.J.A.C. 7:45-2.2(b) and "staff" at the end of paragraph (b)2 upon adoption.

COMMENT: N.J.A.C. 7:14-2.2(c) requires that municipal approving agencies submit all applications to the Commission following approval. However, it should not always be necessary for the municipal approving agency to submit all applications to the Commission because the applicant may have already submitted all required materials pursuant to subsection (b). Subsection (c) should only require the municipal approving agency to provide the Commission with an application if the applicant has not already done so. In this way, duplication of effort and possible delay can be avoided.

RESPONSE: The Department agrees with the comment. "[U]nless application for the proposed project has been previously made to the Commission" will be added to the end of N.J.A.C. 7:45-2.2(c) upon adoption.

7:45-2.4

COMMENT: The reports of pre-application conferences described in N.J.A.C. 7:45-2.4(b) should be made available to the public and sent to the municipality in a timely manner.

RESPONSE: The report of each pre-application conference, prepared by the Commission staff, is sent to the municipality in a timely manner and is available for public review at the municipal office and the Canal Commission office.

7:45-2.6

COMMENT: N.J.A.C. 7:45-2.6(a) provides that the Commission shall declare an application complete within five working days of receipt of the required items, but it does not provide that the Commission must inform the applicant of deficiencies in the application within this period of time. In order to avoid delay and debate concerning completeness of an application, the Commission should be required to notify an applicant of missing items within that same period.

RESPONSE: N.J.A.C. 7:45-2.6(a) reasonably provides that the Commission is not obligated to declare an application complete for the purpose of commencing the 45-day review period until the applicant has complied with the submission requirements. Upon receipt of an application, it is the practice of the Commission staff to review the application to determine if the required items needed for a complete application have been submitted and notify the applicant of any missing items as soon as possible. Once the missing items have been submitted, the Commission has five days to declare the application complete.

COMMENT: N.J.A.C. 7:45-2.6(c), providing for automatic approval if the Commission takes no action within 45 days after an application is declared complete, should be deleted.

RESPONSE: N.J.A.C. 7:45-2.6(c) implements the unequivocal 45-day statutory requirement set forth in N.J.S.A. 13:13A-14c.

7:45-2.9

COMMENT: N.J.A.C. 7:45-2.9(a) is too broad in its scope and, in effect, provides the Commission with the authority to veto all other State agency approvals of projects involving any portion of the State Park. "Involving" is too broad a term and provides no guidance to developers attempting to assess the issues involved in obtaining the various State approvals which a particular development may require.

RESPONSE: N.J.A.C. 7:45-2.9(a) is consistent with N.J.S.A. 13:13A-13d authorizing the Commission to review and approve, reject or modify any State project planned or State permits issued in the Park. N.J.A.C. 7:45-2.9(a) is clarified upon adoption to provide "directly" involves any portion of the Park or any activity therein.

COMMENT: N.J.A.C. 7:45-2.9(a) is inconsistent with the general purposes of the proposed rules. N.J.A.C. 7:45-1.1 states that one of the purposes of the Commission is to cooperate with State reviewing agencies.

The provisions of N.J.A.C. 7:45-2.9(a), however, subordinate all other agencies to the authority of the Commission. This power is beyond the scope of powers bestowed upon the Commission by the enabling legislation and should be deleted from the regulations.

RESPONSE: As stated above, N.J.A.C. 7:45-2.9(a) is consistent with N.J.S.A. 13:13A-13d. N.J.A.C. 7:45-2.9(a) is also consistent with the purpose of the rules as provided in N.J.A.C. 7:45-1.1 and with the intent of the Legislature in creating the Park and establishing the Commission. The pertinent part of N.J.A.C. 7:45-1.1 referred to in this comment provides the "[t]he rules are intended . . . to promote cooperation between the Commission, municipal, county and State reviewing agencies and private land users." The intent of this provision is not mere Commission cooperation with the various reviewing agencies for the sake of cooperation but that the Commission encourage all the various agencies to work together to achieve the intent and purpose of the Legislature when it created the Canal Park and authorized the Commission to be the sole agency responsible for coordinating the development and protection of the Park in a coherent manner (N.J.S.A. 13:13A-1 et seq.). The Legislature found that "within State Government, decisions which affect the canal and the State owned land appertaining thereto are often made separately by different State agencies and local governing bodies . . . that in general the decisions which are made often reflect local expediencies rather than a coherent plan" (N.J.S.A. 13:13A-2a). In response to this finding, the Legislature created the Commission "to prepare, adopt, and implement a master plan for the physical development of the park, and to review State and local actions that impact on the park to insure that these actions conform as nearly as possible to the Commission's master plan" (N.J.S.A. 13:13A-2b, 13 and 14). N.J.A.C. 7:45-2.9(a) implements not only the intent and purpose of the Legislature but the specific provisions of N.J.S.A. 13:13A-13d which expressly authorizes the Commission to "review and approve, reject or modify, any State project planned or State permits issued in the park. . . ."

COMMENT: Automatic completeness and approval triggers similar to those set forth in the Municipal Land Use Law at N.J.S.A. 40:55D-10.3 should be included in N.J.A.C. 7:45-2.9(b) if the Commission fails to act within a stated number of days of receiving a complete application. Without such a provision, there would be no assurance that the Commission would act in a timely manner, and the entire approval process would be subject to potential undue delays.

RESPONSE: The Department disagrees. The State permits subject to review by the Commission pursuant to N.J.A.C. 7:45-2.9(b) are often complex requiring special review procedures. The procedures proposed in this subsection have not been changed from the expired rules. The Commission has consistently reviewed State permits in a timely manner. Furthermore, unlike the Act at N.J.S.A. 13:13A-14c which provides that failure by the Commission to take any action within 45 days from the date of submission of the application shall constitute an approval by the Commission, the Act at N.J.S.A. 13:13A-14b, which provides for Commission review of State actions including permit issuance, does not contain an "approval trigger".

COMMENT: N.J.A.C. 7:45-2.9(b) should be modified to allow for referral reviews in conjunction with other Department permit applications. Thus, when an applicant submits a stream encroachment permit application to the Bureau of Flood Plain Management in the Department's Division of Coastal Resources a referral is provided to the Commission. Commission review of the application would occur within the 45 day time frame and comments (in terms of approval, denial or approval with conditions) could then be incorporated within the stream encroachment decision document. Sufficient permitting apparatus and cross referencing exist within the Department without the need to require the applicant to file yet another permit application.

RESPONSE: N.J.A.C. 7:45-2.9(b) is consistent with the provision of N.J.S.A. 13:13A-13d which authorizes the Commission to review State permits issued. The subsection provides for Commission review once a state agency has determined to issue a permit.

COMMENT: Does N.J.A.C. 7:45-2.9(a) mean that State permits cannot be issued until an application has been reviewed by the Commission?

RESPONSE: Yes.

COMMENT: N.J.A.C. 7:45-2.10 provides that the Commission shall approve State actions within the Review Zone that impact on the Park. The Commission should have the authority to reject or modify State actions.

RESPONSE: N.J.A.C. 7:45-2.10 is consistent with the definition of State action and the Commission's scope of review of State action set forth in N.J.S.A. 13:13A-14b which does not authorize the Commission to reject or modify.

## DOPTIONS

45-3.1

COMMENT: N.J.A.C. 7:45-3.1(f)1 should be consistent with the Municipal Land Use Law. Paragraph (f)1 provides that all Certificates of approval issued to applicants shall lapse if construction has not commenced within three years of the date of issuance thereof and that no extensions are permitted. This is inconsistent with N.J.S.A. 40:55D-49 and 52 which provide for longer periods of effectiveness of site plan approvals depending on the size and comprehensiveness of the project. This provision of the proposed rules remains, the effectiveness period approved by a municipal approving agency will lose much significance. An applicant will either have to begin construction within three years of the issuance of the Certificate of Approval or reapply to the Commission every three years.

RESPONSE: The Department does not agree. As a State agency, the Commission is not subject to the Municipal Land Use Law. The Commission, based on past practice under the expired rules, has determined that lapse of the Certificate of Approval is appropriate if construction does not commence during the three year period between the date of the certificate and the start of construction. However, N.J.A.C. 7:45-3.1(f)1 allows the Commission to extend a Certificate of Approval if an applicant does not start construction within the three year period.

COMMENT: N.J.A.C. 7:45-3.1(g) provides that as a condition precedent to the Commission's issuance of a Certificate of Approval, the applicant shall satisfy the Commission that a conservation and maintenance easement has been executed and filed. The form of easement currently used to satisfy this requirement is not clear in regard to liability and obligations of a transferor of title subject to this easement. The easement form should be revised to include the following provision: "Upon transfer of any grantee of title to the subject property, Owner (and any successor, heir or assign of Owner) transferring title shall have no further liability or any obligations arising hereunder after the time of such transfer of title, but shall not be released from any obligations which arose prior to the transfer of title by it."

RESPONSE: The Department is satisfied that the current form of easement clearly releases a previous owner from responsibility upon transfer of title.

COMMENT: N.J.A.C. 7:45-3.1(e) should be revised to provide that the Commission shall have access to the project site "upon consent of the property owner".

RESPONSE: The Department disagrees. As proposed, N.J.A.C. 7:45-3.1(e) is consistent with N.J.S.A. 13:13A-13c which authorizes the Commission to enter any building or property to carry out the purposes of the Act.

45-4.1

COMMENT: N.J.A.C. 7:45-4.1 should be revised to allow third parties to request an adjudicatory hearing.

RESPONSE: The Act does not require that any party has a right to a hearing. The proposed rule allowed the applicant, municipality, and the appropriate municipal and county approving agencies to request a hearing. The rule has been clarified to allow an affected party who had specifically requested notice of the Commission's decision to request a hearing in order to include persons with a constitutionally protected interest which might require a hearing.

COMMENT: N.J.A.C. 7:45-4.1(d) is overbroad and inconsistent with N.J.A.C. 7:45-4.2(b). N.J.A.C. 7:45-4.1(d) provides that "no project may commence pending completion of all appeal processes." However, N.J.A.C. 7:45-4.2(b) provides that "conditions which are not contested for which the Department has denied the hearing request shall not be affected by or considered at the hearing." If portions of a project are not affected by the hearing, an applicant should be permitted to begin construction on those portions of the project, pending appeal. This prohibition in N.J.A.C. 7:45-4.1(d) has a potential "chilling" effect upon applicants, who may be constrained by time and therefore refrain from pursuing their rights to an adjudicatory hearing regarding one portion of the project because they will be unable to begin work on unaffected portions of their projects until the appeal process is complete. N.J.A.C. 7:45-4.1(d) should enable an applicant to work on portions of a project unaffected by appeals.

RESPONSE: The Department agrees to clarify the rule upon adoption to provide that a project subject to an adjudicatory hearing may proceed unless a stay of the issuance of a certificate of approval is requested and the Department determines that there is good cause for a stay. The phrase "affected by or" has been deleted from N.J.A.C. 7:45-4.2(b) and N.J.A.C. 7:45-4.1(d) has been deleted. N.J.A.C. 7:45-4.2(e) has been added allowing the Department upon request and good cause to stay issuance of the Certificate of Approval.

## ENVIRONMENTAL PROTECTION

7:45-5.2

COMMENT: N.J.A.C. 7:45-5.2(b) should be changed to freshwater wetlands. Applicants should submit information regarding the location of freshwater wetlands as defined in the Freshwater Wetlands Protection Act. The proposed rule requires information regarding marshlands.

RESPONSE: The Department agrees. N.J.A.C. 7:45-5.2(b)2 will be changed to "Freshwater Wetland" as defined in the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., and implementing rules at N.J.A.C. 7:7A-1.4.

COMMENT: In N.J.A.C. 7:45-5.2(b)7, the word "distances" should be changed to the word "length".

RESPONSE: The Department agrees and has made this change.

COMMENT: Who determines the "significance" of a landmark or historic place for the purpose of N.J.A.C. 7:45-5.2(c)6?

RESPONSE: The historic significance of a property can be established in several ways. The most formal method is the nomination of a property and its approval for inclusion in the New Jersey Register of Historic Places which is administered by the Office of New Jersey Heritage in the Department. However, because listing in the Register requires affirmative action in the form of submission of a nomination, many places that are historically significant are not listed in or determined to be eligible for listing in the Register. Consequently, the applicant should consult with local historic societies as well as reviewing the Register.

COMMENT: N.J.A.C. 7:45-5.2(h) allows the Commission to request additional information from the applicant. So long as an applicant sets forth the information specifically required under N.J.A.C. 7:45-5.2(a) through (g), an application should not be deemed incomplete by virtue of such a request for additional information.

RESPONSE: The Department disagrees. N.J.A.C. 7:45-5.2(h) is intended to address those circumstances in which a comprehensive review of a project for storm drainage and water quality impact may require site specific information about the proposed project and the site in addition to the information required in subsections (a) through (g). In those instances when the Commission determines that additional information is required, the project cannot be adequately reviewed until all additional material deemed necessary for review is received by the Commission.

7:45-5.3

COMMENT: N.J.A.C. 7:45-5.3 should be revised to encourage the use of natural drainage patterns and natural retention techniques.

RESPONSE: The rules establish performance standards which do encourage the use of natural drainage patterns and natural retention techniques because they are always less costly when effective. Most projects, however, so alter the site that natural systems will not work.

7:45-5.4

COMMENT: The instructions for calculating antecedent rainfall in N.J.A.C. 7:45-5.4(b) need to be clarified regarding whether the assumption of one inch of antecedent rainfall is to be made for both existing and developed site conditions or for developed conditions only.

RESPONSE: The wording referring to an antecedent rainfall will be removed and N.J.A.C. 7:45-5.4(b) clarified to provide:

The detention facilities shall provide retention of site runoff for any storm up to and including the two, 10 and 100 year storm. Runoff greater than that for a 100 year storm shall be passed over an emergency spillway. The construction sequence shall show the detention pond constructed in advance of any other soil disturbance. The pond shall act as a sedimentation basin thereafter. Surplus sediment shall be removed from the pond after construction is complete.

COMMENT: To what does the word "this" refer in the final sentence of N.J.A.C. 7:45-5.4(b)?

RESPONSE: As clarified in the above response, the word "this" refers to a 100 year storm.

COMMENT: In N.J.A.C. 7:45-5.4(c)3, it is not clear what the phrase "from a single family housing and unimproved areas" refers to. Does the sheet flow have to pass through both a single family housing area plus an unimproved area or simply over 30 feet of lawns or leaf mulch area?

RESPONSE: The sheet flow must pass through either a single family housing area or an unimproved area. N.J.A.C. 7:45-5.4(c)3 is clarified upon adoption to provide "from a single family housing or unimproved areas . . ."

COMMENT: N.J.A.C. 7:45-5.4(c)5 should be revised to more clearly indicate that the provision refers to the passage of two sequential 1.25 inch/two-hour storm water quality storms.

RESPONSE: The Department has determined to delete N.J.A.C. 7:45-5.4(c)5.

COMMENT: The policy set forth in N.J.A.C. 7:45-5.4(d) of collecting upstream waters on-site instead of detaining run-off generated on-site is inconsistent with the Coastal Resource and Development Policies which, at N.J.A.C. 7:7E-3.30, prohibits cutting, damming, filling, paving and locating of detention basins within intermittent stream corridors.

RESPONSE: The Commission disagrees. N.J.A.C. 7:45-5.4(d) does not encourage on-stream structures that would manage runoff from distant sites. It applies only to runoff from immediately adjoining property that flows across the project site.

COMMENT: N.J.A.C. 7:45-5.4(e) should be revised to more clearly indicate that, following reduction of the on-site areas used to compute required detention storage in paragraphs(e)1, 2 and 3, the remainder of the site area should be treated as off-site land.

RESPONSE: The Department, based on its experience of administering these rules for the past eight years, finds that this provision does not need to be clarified.

COMMENT: N.J.A.C. 7:45-5.4(f) should be revised to state that those portions of a site permanently dedicated to vegetative growth may be considered off-site land. The rules as presently proposed state that such portions of a site may be excluded from all calculations. This should not be done for portions which are tributary to a stormwater management facility, since it will result in the underestimation of the facility's drainage area and inflows.

RESPONSE: The Department disagrees. The proposed rules are concerned with the impact of development with the Review Zone upon the Canal and the Canal Park. The Commission encourages developers to permanently dedicate portions of their project sites to natural vegetative cover and feels that it is fair to exclude runoff from such natural areas when this dedication is made. Furthermore, the proposed rules do not address regional stormwater facilities. The Commission only reviews the control of stormwater runoff from each developed part of a project site.

COMMENT: What constitutes a "satisfactory" conservation and maintenance easement as referenced in N.J.A.C. 7:45-5.4(j).

RESPONSE: The Commission provides a standard form conservation and maintenance easement for the applicant to complete and execute. The Department will clarify the last sentence of N.J.A.C. 7:45-5.4(j) to provide that "In the case of developments where lots are to be sold, permanent conservation and maintenance easements to ensure continued performance of these obligations shall be completed and executed by the owner of the property on forms provided by the Commission."

#### 7:45-5.5

COMMENT: N.J.A.C. 7:45-5.5(a) is arbitrary and unreasonable. This section assumes, for the purposes of computing runoff, that all lands within the site, prior to development, are in "good condition" regardless of the actual condition of the land as it exists at the time of the computation. Good condition is not defined in the proposed rules and there is no justification for arbitrarily assuming that land is in "good condition." An applicant should only be required to maintain the same degree of runoff after the development as existed prior thereto, and not deal with a hypothetical, possibly idealistic notion of runoff resulting from land in assumed "good condition."

RESPONSE: The Department agrees to clarify N.J.A.C. 7:45-5.5(a) to provide that as used in this section the terms "good condition," "good cover" and "conservation treatment" shall have the meaning defined in Soils Conservation Technical Release #55 dated 1986 prepared by the United States Soil Conservation Service now in effect and as may hereafter be amended. The Department disagrees, however, that the assumption of good condition for the purposes of computing runoff regardless of conditions existing at the time of computation is not justified. The assumption of good condition, which is a common practice of municipal and county approving agencies, is intended to preclude the potential for the condition of a site to be degraded thereby reducing the runoff control obligation when the site is developed.

COMMENT: A list of all the Class II watersheds referred to in N.J.A.C. 7:45-5.5(a) should be included.

RESPONSE: Class II watersheds drain into many streams that are either unnamed or known only by local names. As provided in the definition of the term in N.J.A.C. 7:45-1.2, a map showing these watersheds can be reviewed in the Commission's office.

#### 7:45-7.1

COMMENT: The meaning of N.J.A.C. 7:45-7.1 needs to be clarified.

RESPONSE: Since the Department has determined not to adopt the Stream Corridor Impact provisions proposed at N.J.A.C. 7:45-6, the Department clarifies N.J.A.C. 7:45-7.1 to provide "[t]his subchapter applies to all watersheds within the Review Zone."

#### 7:45-7.2

COMMENT: In discussing detention facilities wholly or partially in the flood hazard area at N.J.A.C. 7:45-7.2(a)1, the phrase "or other area which are frequently flooded" is used. The term "frequently flooded" is too subjective and should be defined.

RESPONSE: The Department does not agree that a specific definition is necessary for the reasons set forth in the response to the eighth comment under N.J.A.C. 7:45-1.2.

COMMENT: N.J.A.C. 7:45-7.2(a)3 allows an applicant to demonstrate that the stormwater detention would be effective during runoff from a three inch six hour storm peaking simultaneously at the site and on the flood hazard area rather than construct a larger detention facility. How is this test to be demonstrated?

RESPONSE: The design engineer for the applicant can provide calculations and evaluation of the impact on the stream immediately upstream and downstream of the site during flood conditions.

COMMENT: The phrase "from side to side" should be deleted from N.J.A.C. 7:45-7.2(a)6.

RESPONSE: The Department agrees and has made this change on adoption.

#### 7:45-8

COMMENT: The Act does not authorize the adoption of the Visual and Natural Quality Impact Review rules proposed at N.J.A.C. 7:45-8

RESPONSE: The proposed Visual and Natural Quality Impact Review rules at N.J.A.C. 7:45-8 is a rational exercise of the authority of the Department, with the approval of the Commission, to adopt rule for the protection of the Park pursuant to the Act. The proposed rule are rationally related to carrying out the objectives of the Act as set forth in N.J.S.A. 13:13A-2, and to the objectives of the Master Plan, which embody the considerations set forth in N.J.S.A. 13:13A-13b. The Act authorizes the Commission to prepare and adopt a master plan for the development and protection of the Park and to delineate a review zone within which the Commission will review projects to determine their conformity with the master plan. Included among the unique characteristics of the Canal and the Park that the Legislature found need protection was the "esthetic surroundings" of the Canal (see N.J.S.A. 13:13A-2a). The Legislature's concern about the need to protect the esthetic surroundings of the Canal is further emphasized in the definition of review zone as the "region appertaining to and including the park . . . in which proposed projects . . . may cause an adverse impact on the park including but not limited to, drainage esthetic and ecological factors. . . ." N.J.S.A. 13:13A-3f. Thus, the Legislature's goal in protecting the Park went well beyond its recreational value and included the goals of avoiding adverse effects on water quality, flooding potential, esthetics, historic and ecological components as well. Therefore, in authorizing the Commission to prepare a master plan to achieve these goals, the legislature mandated that the Commission give due consideration to the development and protection of the following components:

- (1) the function of the canal as a major water supply facility in the State; (2) the necessity to provide recreational activities to the citizens of this State, including but not limited to, facilities, design capacities, and relationship to other available recreational areas; (3) existing historical sites and potential restorations or compatible development; (4) the range of uses and potential uses of the canal in the urban environments of the older, intensively developed communities through which it passes; and (5) designated wilderness areas to be kept as undeveloped, limited-access areas restricted to canoeing and hiking. N.J.S.A. 13:13A-13b.

The master plan consists of a statement of the objectives and standards for the development of these components and protection of the unique characteristics of the Park, including but not limited to the aesthetic surroundings, from the potential adverse impacts of proposed projects within the Review Zone. The Master Plan recognizes that the unique characteristics that contribute to the natural quality and the historic, aesthetic and recreational use of the Park are partially created by the visual environment which includes lands adjoining the Park and that the visual character of a project that can be seen from the Park can have an adverse impact on the character of the Park. The Act further provides that "[t]he department shall, with the approval of the Commission, have power to make such rules and regulations for the use and protection of the Park as may in its judgment be necessary . . ." N.J.S.A. 13:13A-10. The Department and the Commission, therefore, are authorized to adopt rules to protect the Park. As previously stated, the Legislature's intent makes it clear that protection of the Park includes the protection of

## DOPTIONS

storic, aesthetic, ecological and recreational values. In addition, protection of the Park clearly includes assuring that projects in the Review Zone conform with the Master Plan. The rules provide a basis of review of the Master Plan objectives and implement the legislative mandate that the Commission "review State and local actions that impact on the park and insure, that these actions conform as nearly as possible to the commission's master plan. . . ." N.J.S.A. 13:13A-11h.

45-8.1

COMMENT: The term "heavily wooded" in N.J.A.C. 7:45-8.1(a) needs to be defined so that an applicant knows when it does not have to submit certain information.

RESPONSE: The Department intends to delete this term. See the response to the next comment.

COMMENT: The requirement in N.J.A.C. 7:45-8.1(a)1 to show the protection of all trees with a diameter at breast height of three inches or greater is onerous.

RESPONSE: The Department agrees and will change this requirement to 12 inches or greater. The Department will also delete from N.J.A.C. 7:45-8.1(a) the requirement to indicate the area covered by trees, typical species, and types that predominate in areas that are heavily wooded.

COMMENT: The requirement in N.J.A.C. 7:45-8.1(a)2 to submit all elevations visible from the Park is onerous. It should be modified to relate only to those structures within 100 feet or some other reasonable distance from the Park.

RESPONSE: The Department does not agree. Applicants must prepare elevations to satisfy the requirements of municipal permits in every case that is reviewed by the Commission. It is not onerous to make copies for the Commission's review projects for their aesthetic impact on the Park.

COMMENT: Several comments were received about the provisions for set-backs from the Park. It was suggested that minimum set-backs could be 400 to 500 feet from the park; that all decisions should be made on a case by case basis; that the proposed standards are consistent with the objectives of the Master Plan; and that Zone A (within which the set-back provisions are applied) should be measured from the Park boundary, not from the center of the Canal.

RESPONSE: The Commission's decisions are made on a case by case basis but the rules provide guidelines that help a prospective applicant understand the criteria used by the Commission to reach its decision. The Commission is satisfied that the guidelines do, as several commenters noted, satisfy the objectives of the Master Plan.

COMMENT: Does the phrase "methods to be employed for visual screening" in N.J.A.C. 7:45-8.1(a)4 pertain to screening of a project from view by observers in the Park?

RESPONSE: Yes

45-8.3

COMMENT: The special compensatory measures in N.J.A.C. 7:45-8.3(a) for the construction of a major project in certain defined portions of Zone A may constitute a taking of property without compensation.

RESPONSE: Many valid State and Federal statutes and rules restrict property owner's use of land. The Department has determined that major projects in those portions of Zone A defined in N.J.A.C. 7:45-8.3(a) can have adverse impacts on the unique characteristics that contribute to the natural quality and the historic, aesthetic and recreational value of the Park and are therefore inconsistent with the objectives of the Master Plan unless there are significant set-backs or other mitigating site-planning techniques. The compensatory measures described in N.J.A.C. 7:45-8.3(a) are examples of the type of mitigating site-planning techniques that can be used in the development of site and building plans for major projects in sensitive environments within Zone A and are not intended to comprise an exclusive listing.

COMMENT: N.J.A.C. 7:45-8.3 needs to be clarified to include predictable standards of mitigation in order to guide the regulated community with regard to the level of mitigation suggested or required to offset an equivalent level of impact.

RESPONSE: The Department disagrees. The compensatory measures proposed in N.J.A.C. 7:45-8.3(a) are intended to provide a frame of reference for the applicant in the development of site and building plans for major projects within the designated sensitive environments in Zone A and to guide the Commission in its review of each proposed project. The Commission has determined that the compensatory measures must be flexible to accommodate the characteristics of each project while achieving the goals of the proposed rules and the Master Plan regarding

## ENVIRONMENTAL PROTECTION

the visual character of the Park. Therefore, the Commission has not included more specific standards of mitigation. The Commission encourages innovative plans and designs which substantially meet the goals of the proposed rules and which will maintain and enhance the visual and natural quality of the Park and its environs.

COMMENT: The dedication of 40 percent of a total project site as suggested at N.J.A.C. 7:45-8.3(a)2 should be taken from the portion of a site located in Zone A, not the total project site.

RESPONSE: The Department does not agree that the 40 percent should be applied only to the portion of a project site located in Zone A. That could result in projects that are excessively close to the Park. The 40 percent standard has been accepted and more than matched by projects built in Zone A.

7:45-8.4

COMMENT: The design standards presented as guidelines in the expired rules are proposed to be made mandatory in N.J.A.C. 7:45-8.4. However, the inherent subjectivity of visual and aesthetic judgments precludes a predictable review procedure.

RESPONSE: The design standards for visual and natural quality impact review proposed in N.J.A.C. 7:45-8.4 are not mandatory in every case and are essentially the same as those contained in the expired rules. As in the expired rules, the proposed design standards are intended to provide a frame of reference for the applicant in the development of site and building plans for each specific project and provide guidance to the Commission in its review of the proposed project. The proposed rules are intended to guide the design, planning and review of projects.

COMMENT: The Commission's imposition of design and aesthetic controls in N.J.A.C. 7:45-8.4 should be specifically limited to areas in which there would be a direct adverse impact on the Park. Any attempt to regulate the color and design of structures on private property beyond the area immediately adjacent to the Park is clearly outside the purpose of the Park Law.

RESPONSE: The Department disagrees for the reasons discussed in response to a previous comment. In response to this particular comment, however, it should be reiterated that the Master Plan recognizes that the unique characteristics that contribute to the natural quality and the historic, aesthetic and recreational value of the Park are partially created by the visual environment which includes lands adjoining the Park. Therefore, the visual character of a project that can be seen from the Park can have an adverse impact on the character of the Park.

**Full text** of the adoption follows (additions indicated in boldface with asterisks \*thus\*; deletions indicated in brackets with asterisks \*[thus]\*):

### CHAPTER 45

#### DELAWARE AND RARITAN CANAL STATE PARK REVIEW ZONE

##### SUBCHAPTER 1. REVIEW ZONE OF THE DELAWARE AND RARITAN CANAL STATE PARK

###### 7:45-1.1 Purpose

The Delaware and Raritan Canal Commission was created pursuant to the Delaware and Raritan Canal State Park Law of 1974, N.J.S.A. 13:13A-1 et seq. The Commission is authorized to prepare and adopt a master plan for the physical development of the Delaware and Raritan Canal State Park and to establish zones in which it will review all private and public projects that impact on the Park and insure that the projects conform as nearly as possible to the master plan adopted by the Commission. This chapter establishes the procedure for the review and sets forth the standards that will be considered by the Commission. The rules are intended to encourage consideration of the natural and recreational resources of the Park and its waterways at the earliest stages of land-use planning and to promote cooperation between the Commission, municipal, county and state reviewing agencies, and private land users.

###### 7:45-1.2 Definitions

As used in this chapter, the following words and terms shall have the following meanings:

"Act" shall mean the Delaware and Raritan Canal State Park Law of 1974, P.L. 1974, c.118, N.J.S.A. 13:13A-1 et seq.

"Canal" means the Delaware and Raritan Canal\*[ , its feeder canal]\* and the abandoned section of the canal in the Township of Hamilton, County of Mercer.

"Class II watershed" means a watershed identified by the Commission as having no history of significantly mingling with the canal water under either normal or storm conditions. The location of these watersheds can be obtained from the Commission's office in Stockton, New Jersey.

"Commission" means the Delaware and Raritan Canal Commission.

"Department" means the Department of Environmental Protection.

"Flood hazard area" means the floodway and flood fringe area of a delineated stream designated by the Department pursuant to the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.

"Governmental projects" means the undertaking of a public improvement, construction or land-use change by a State department or agency, county, municipality or any other governmental entity except interior alterations to an existing structure involving no change of use.

"Major project" means:

(a) If any part of a project site falls within Zone A, the entire project is "major" if it:

1. Involves construction, development, or redevelopment of four or more dwelling units; or
2. Involves no dwelling units, but will cover with impervious surfaces 10,000 square feet or more of previously uncovered land; or
3. Involves any of the following uses:
  - i. Livestock pens, corrals, or feed lots;
  - ii. Pipelines, storage or distribution systems for petroleum products or chemicals;
  - iii. Liquid waste, storage, distribution or treatment facilities (excluding home septic systems);
  - iv. Solid waste storage, disposition, incineration, or landfill;
  - v. Hazardous waste treatment, storage or disposal;
  - vi. Quarries, mines or borrow pits; or
  - vii. Land application of sludge or effluents.

(b) If no part of the project site falls within Zone A, but some of it falls within Zone B, the project is "major" if it:

1. Will cover one acre of land with impervious surfaces; or
2. Involves any of the land uses itemized in (a)3 above.

"Master Plan" means the Delaware and Raritan Canal State Park Master Plan \*[adopted by the Commission in May 1977, including any modification, revision or amendment thereof subsequently adopted by the Commission]\* **\*consisting of the following five planning documents adopted by the Commission as the Master Plan including any modification, revision or amendment thereof subsequently adopted by the Commission pursuant to N.J.S.A. 13:13A-13:**

1. Master Plan (May, 1977);
2. Design Guide (December, 1980);
3. Historic Structures Survey (June, 1982);
4. Historic Recreational Development Plan (September, 1984); and
5. Development Guide (August, 1985)\*.

"Minor project" means:

(a) Regarding Zone A, a project which is not a major project.

(b) Regarding Zone B, projects other than major projects are not subject to review in Zone B.

"Municipal approving agency" means any body or instrumentality of the municipality responsible for the issuance of permits, which shall include but not be limited to building permits, zoning variances, and excavation permits; or the approval of private projects, which shall include but not be limited to governing bodies, planning and zoning boards, building inspectors, and municipal engineers.

"Net fill" means the total amount of fill created incidental to the completion of the project less the amount of excavated material removed during completion of the project, both measured below the elevation of the edge of the flood hazard area.

**"One hundred year flood line" means the line which is formed by following the outside boundaries of the area inundated by a 100 year flood. A 100 year flood is estimated to have a one percent chance, or one chance in 100, of being equalled or exceeded in any one year.\***

"Park" means the Delaware and Raritan Canal State Park as determined by the Department.

"Private projects" means any proposed development, structure or land-use change requiring any municipal approval or permit, except interior alterations to an existing structure involving no change of use or connections to publicly owned sewerage systems.

"Review Zone" means that region designated by the Commission appertaining to and including the Park in which proposed projects may cause an adverse drainage, aesthetic or other ecological impact on the Park. The Review Zone and its subzones designated as Zone A (being the area within one thousand feet on either side of the center line of the Canal) and Zone B (being the balance of the review zone are delineated on maps available **\*for review\*** at the Commission office in Stockton, New Jersey and at the offices of the following counties and municipalities whose boundaries encompass part of the Review Zone:

In Hunterdon County:

Delaware, East Amwell, Franklin, Kingwood, Lambertville, Raritan, Stockton, West Amwell

In Mercer County:

East Windsor, Ewing, Hamilton, Hightstown, Hopewell Borough, Hopewell Township, Lawrence, Pennington, Princeton Borough, Princeton Township, Trenton, Washington, West Windsor

In Middlesex County:

Cranbury, Monroe, New Brunswick, North Brunswick, Plainsboro, South Brunswick

In Monmouth County:

Millstone

In Somerset County:

Franklin, Hillsborough, Manville, Millstone, Montgomery, Rock Hill, South Bound Brook

**\*["Stream corridor" means the stream and all of the land on either side of the stream which is within the 100 year flood line and a portion of the land within a 100 foot wide buffer around all 100 year flood lines.]\***

7:45-1.3 Scope of review

(a) In the Review Zone, the Commission **\*[will]\* \*shall\*** review governmental and private projects\*[ , and State permits for land-use activities,]\* **\*which have the potential to cause an adverse impact on the Park including drainage, aesthetic and ecological factors. In addition, the Commission shall approve all State actions\*** that impact on the Park. Each project and **\*[permit will]\* \*State action shall\*** be reviewed for its conformance with the overall objectives of the Master Plan of the Delaware and Raritan Canal State Park and with the specific standards of this chapter. Review will address **\*[five]\* \*two\*** specific types of impact:

1. Storm drainage and water quality impact; **\*and\***
- \*[2. Stream corridor impact;]\***
- \*[3.]\* \*2.\*** Visual and natural quality impact\*[\*];\*\*.\*
- \*[4. Traffic impact; and**
- 5. Noise impact.]\***

(b) In each case, the scope and depth of review will depend upon the size and location of the land-use activity.

1. In Zone A:

i. Major projects are reviewed for storm drainage and water quality impact, **\*and\*** visual and natural quality impact\*[ , stream corridor impact, traffic impact and noise impact]\*.

ii. Minor projects are reviewed for storm drainage and water quality impact, **\*and\*** visual and natural quality impact\*[ , and noise impact]\*. Submission requirements are significantly less detailed for minor projects than for major projects. They are, however, expected to comply with the general standards in N.J.A.C. 7:45-5 for **\*storm drainage and\* water quality \*impact review\*** and **\*N.J.A.C. 7:45 for\* visual and natural quality impact.**

2. In Zone B, major projects are reviewed for storm drainage and water quality impact\*[ , traffic impact and stream corridor impact]\*

**\*7:45-1.4 Master plan of the Delaware and Raritan Canal State Park**

(a) The objectives of the Master Plan of the Delaware and Raritan Canal State Park are as follows:

1. The Delaware and Raritan Canal is a water supply system.

## ADOPTIONS

- i. The integrity of the Canal as a structure which carries water must be protected.
  - ii. The quality of the water that enters the Canal whether from a point source, overland flow of storm water runoff, or from groundwater exchange must be suitable for a source of drinking water.
  - iii. Other uses or development projects must be compatible with the need to operate and maintain the Canal as a water supply system.
2. The Park is a site for recreational activities.
- i. Recreational development should be aimed at encouraging the widest possible range of compatible recreational activities.
  - ii. The types of recreational activities to be encouraged depend upon the "Canal Environment" as designated in the Master Plan.
  - iii. Recreational development and access are to be allocated to all parts of the Park in order to avoid concentrating use at a few locations.
  - iv. Adjoining recreational resources should be connected to the Park for mutual enhancement. The development of additional recreational resources adjoining the Park is to be encouraged.
3. The Park is a historic resource.
- i. All repair, maintenance, and development work on the Canal and its associated structures should respect and enhance the historic character of the Park.
  - ii. The Park's historic character is derived as much from the context through which the Canal flows as from the Canal's structures. That context—the area that can be seen from the Canal and its towpath—should be preserved in a manner that reflects its historic nature.
  - iii. The role that the Canal played in the history of New Jersey should be interpreted for public edification.
  - iv. The Park should provide an appropriate context for nearby historic structures, landscapes, or sites.
4. The Park is an area that should be maintained in its natural state.
- i. The lands and water in the Park should be maintained to preserve wildlife habitats and the flourishing of natural vegetation communities.
  - ii. The Park should be a means of connecting other natural areas in the region, thereby enhancing their ability to function.
  - iii. Rare, endangered, or threatened species of plants and animals found in the park should be carefully preserved.
  - iv. Landscape materials used in the Park, or used on adjoining lands, should be native to the region and appropriate for their specific habitat.
  - v. The greatest possible variety of habitats for plants and animals should be preserved.
  - vi. The Park should serve as a migratory route for plants and animals.
5. The Park is a means of enhancing urban areas.
- i. The recreational, historic, and natural conservation objectives are all applicable to urban areas through which the Canal flows and should be appropriately applied there.
  - ii. The Park should serve as a transportation route within urban areas for non-motorized vehicles and pedestrians.
  - iii. The Park should be both a boundary for urban neighborhoods and a means of connection among them.
  - iv. The Park should be a means of connecting urban areas with recreational areas, historic sites, and natural areas in the region beyond the urban boundary.\*

## SUBCHAPTER 2. APPLICATION FOR PROJECT REVIEW

### 7:45-2.1 General provisions

(a) Each applicant shall submit to the Commission sufficient information to adequately review and consider the project. Application forms are available from the Commission.

(b) Applicants may combine exhibits for any project provided all required information is shown thereon with sufficient clarity to be understood.

### 7:45-2.2 Application for review of a private project

(a) The initial application for a proposed private project within the Review Zone shall be submitted by the applicant to the appropriate municipal approving agency. If approved by the municipal approving agency, the application shall be reviewed by the Commission.

(b) An application for review of a private project may be submitted by the applicant to the Commission **\*for staff review\***:

## ENVIRONMENTAL PROTECTION

1. At any time prior to municipal review and approval; or
2. At any time during the planning stages for pre-application discussion with the Commission **\*staff\***.

(c) All applications shall be submitted to the Commission by the municipal approving agency after it has approved the project **\*unless an application for the proposed project has been previously made to the Commission\***.

(d) No application shall be reviewed by the Commission until it has been determined to be a complete application which, in addition to the pertinent submission requirements in this chapter, shall include a resolution of approval of the proposed project by the appropriate municipal approving agency.

### 7:45-2.3 Application for review of governmental projects

State departments or agencies, counties, municipalities and any other governmental entity shall submit plans for reviewable projects prior to undertaking them and are encouraged to discuss proposed projects with the Commission at the earliest planning stages.

### 7:45-2.4 Review of private projects

(a) The Commission has established a peremptory review procedure to eliminate the overlap of governmental review of private projects under the following conditions:

1. If a county adopts and implements standards which are determined by the Commission to be the equivalent of those of the Commission, the Commission may approve the private project without further review upon receiving notice from the county approving agency that the private project is in compliance with its standards. However, in cases where those standards are relaxed by the county so as to grant approval without full compliance, the notice shall describe in detail the reasons for the relaxation of each standard and, in such cases, the Commission may determine that the private project is not eligible for peremptory review but is subject to full review as provided in (b) below.

2. Where the county has not adopted standards determined by the Commission to be the equivalent of its standards, or where the county does not review the project, but where the project is reviewed by a municipal approving agency which has adopted and implements such standards, the Commission may approve the project without further review upon notification from the municipal approving agency that the project is in compliance with its standards. However, in the cases where those standards are relaxed by the municipal approving agency so as to grant approval without full compliance, the notice shall describe in detail the reasons for the relaxation of each such standard, and, in such cases, the Commission may determine that the project is not eligible for peremptory review but is subject to full review as provided in (b) below.

(b) Private projects which are not eligible for peremptory approval:

1. At any time before applying for Commission approval, an applicant may request a pre-application conference to discuss the project with the Commission. The purpose of this conference is to enable the applicant to plan economically for conformity with the Master Plan and its policies and standards and those of this chapter. No requirements are imposed by this chapter as to plans, documents, or data to be presented for discussion at a pre-application conference. However, this chapter contains a list of materials and data required as part of any application for review of each specific impact. It would be advisable that the applicant provide the Commission with as much of this information as practicable for the pre-application conference.

2. A report of the pre-application conference shall be prepared by the Commission and may include:

- i. A summary of the strengths and weaknesses of the project as related to the policies and standards of the Master Plan and this chapter.

- ii. A recommendation to the applicant and the reviewing municipal agency or official.

3. The Commission's pre-application report shall, upon completion, be mailed to the applicant, the county planning board, and the municipal approving agency.

4. Comments, findings, conclusions, and recommendations of the Commission's pre-application report and statements made during the

pre-application conference are for guidance only and shall not be binding upon the applicant or the Commission.

(c) Submission procedures for private projects eligible for peremptory approval are established in (a) above and in N.J.A.C. 7:45-5.2.

(d) For private projects not eligible for peremptory approval, the municipal approving agency shall transmit a copy of the resolution of approval by the municipal approving agency to the Commission. All other forms, documents, and data required for the Commission's review pursuant to N.J.A.C. 7:45-2 may be submitted by the applicant either prior to approval by the municipal approving agency or forthwith upon such approval.

#### 7:45-2.5 Waiver of submission requirements

The Commission may waive some of the submission requirements for a particular project if the Commission already has the information or if the applicant establishes to the satisfaction of the Commission that the information is not necessary for the Commission's review of the project.

#### 7:45-2.6 Project review and decision

(a) The Commission shall declare the application complete within five working days after receipt of all forms, data, and documents required to be submitted under this chapter. Upon declaring the application complete, the Commission shall notify the applicant by certified mail, shall notify the relevant municipal approving agency, and shall publish notice of the application in "The DEP Bulletin".

(b) Within 45 days from the date when an application has been declared complete, the Commission shall take one of the following actions:

1. Approve the application and advise the appropriate municipal approving agency that the project can proceed as proposed;
2. Reject the application and so advise the appropriate municipal approving agency and the governing body of the municipality; or
3. Approve the application subject to conditions and return the application to the appropriate municipal approving agency which shall be responsible for assuring that the conditions are satisfied before issuing a permit.

(c) If no action is taken by the Commission within a period of 45 days from the date that the application is declared to be complete, the application shall be deemed to have been approved by the Commission.

#### 7:45-2.7 Review of governmental projects

(a) The Commission shall review and either approve, reject or conditionally approve any project in the Review Zone proposed by a State department or agency, county, municipality or any other governmental entity.

(b) Any State department or agency, county or municipality planning to undertake a governmental project in the Review Zone:

1. Shall submit its plans and such data required by the Commission for the Commission's review prior to physically undertaking the project; and
2. Is encouraged to informally discuss its plans with the Commission at any time prior to submission of its plans for review; but in any case,
3. Shall submit its plans to the Commission for its review and approval, rejection, or conditional approval not less than 60 days before advertising for bids for the construction of a project or executing a contract therefor, whichever is sooner.

#### 7:45-2.8 Notice of decision

(a) The Commission shall notify the Governor of each decision concerning governmental projects within the Park.

(b) For all private projects, the Commission shall notify the applicant of its final decision by certified mail, shall notify the appropriate municipal and county approving agencies, shall publish notice of the decision in the DEP Bulletin, and shall notify all *\*[interested]\** *\*affected\** persons who specifically requested notice.

(c) The Commission's decision shall be binding on the applicant, the municipality and the municipal approving agency. In the case of any violation or threat of a violation of a Commission decision by a municipality or by the appropriate municipal approving agency, the Commission may institute civil action:

1. For injunctive relief;
2. To set aside and invalidate a decision made by a municipality or appropriate municipal approving agency in violation of the Act, this chapter or the Commission's decision; or
3. To restrain, correct or abate such violation.

#### 7:45-2.9 Review of State permits

(a) The Commission shall review and either approve, reject or modify each permit or approval to be issued by any State department or agency to any person or governmental entity if the permit or approval *\*directly\** involves any portion of the Park or any activity therein.

(b) Prior to the issuance of each reviewable State permit, a complete permit application together with all supporting information, shall be submitted by the applicant to the Commission, unless the department or State agency involved has already done so. The Commission shall, within 45 days of receiving a copy of the complete permit application and all other information, either approve, reject, or approve with conditions the permit. The Commission shall notify the applicant and the state department or agency of the Commission's decision within 10 days of that decision.

#### 7:45-2.10 Review of State actions

(a) The Commission shall approve all State actions within the Review Zone that impact on the Park, and insure that these actions conform as nearly as possible to the Master Plan and relevant local plans or initiatives. The State actions which the Commission shall review include:

1. Actions by the New Jersey Water Supply Authority concerning the improvement, maintenance and operation of the Canal as a water supply facility;
2. Actions by the Division of Parks and Forestry in the Department in the development of the Park for recreational purposes; and
3. Actions by any other State department or agency that impacts on the Park.

### SUBCHAPTER 3. CERTIFICATE OF APPROVAL

#### 7:45-3.1 Certificate of approval

(a) Construction shall not begin on any project nor shall any project be undertaken prior to issuance of the Commission's Certificate of Approval which shall be issued within 10 days of the decision granting approval or conditional approval and receipt of the proof of filing set forth in (g) below.

(b) A Certificate of Approval shall explicitly state any conditions imposed by the Commission.

(c) Failure to comply with any provision or any condition imposed in a Certificate of Approval shall render the approval null and void.

(d) The applicant shall not deviate from the approved plans and any deviation shall render the approval null and void if the Commission determines that the deviation substantially alters the character of the project or impairs the intent of either the Master Plan or this chapter.

(e) The holder of the Certificate of Approval shall allow the Commission or its authorized agent access to the project site to inspect the project and otherwise determine compliance with the Certificate of Approval and this chapter.

(f) The Certificate of Approval shall lapse:

1. If construction does not commence within three years from the date of the Certificate and no extension is granted by the Commission; or
2. If construction ceases for a period of one year; or
3. If the municipal permits or approvals expire, lapse, or are revoked.

(g) As a condition precedent to the Commission's issuance of a Certificate of Approval, the applicant shall *\*[satisfy]\** *\*provide proof of filing to\** the Commission *\*in order to demonstrate\** that a properly executed Conservation and Maintenance Easement has been filed in the Office of the County Clerk or Registrar of Deeds. The Certificate of Approval shall not be issued until proof of filing is received at the Commission's office. The easement shall incorporate and implement the condition of approval set forth by the Commission in the Notice of Decision on the proposed project.

## ADOPTIONS

### SUBCHAPTER 4. ADJUDICATORY HEARINGS

#### 7:45-4.1 Request for an adjudicatory hearing

(a) When the Commission denies\*, **approves\***, or approves with conditions a project, the notice of decision shall advise the applicant, municipality, \*[and]\* municipal reviewing agency **\*and those affected parties who specifically requested notice of the Commission's decision\*** of the right to request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1\*[-1 et seq]\*. The notice shall include the following:

1. Where and to whom hearing requests should be sent;
2. The deadline by which hearing requests must be submitted; and
3. The information that is required to be in the hearing request under (c) below.

(b) Within 30 calendar days following the service of the notice of decision under N.J.A.C. 7:45-2.8, the applicant, municipality **\*[or]\*\*,\* municipal approving agency \*or an affected party\*** may submit a request to the Commission for an adjudicatory hearing to contest the denial\*, **approval\*** or approval with conditions of a project.

(c) The hearing request shall contain:

1. The name, mailing address and telephone number of the person making the request and the project number;
2. A clear and concise factual statement of the nature and scope of the interest of the requester;
3. The names and addresses of the persons whom the requester represents;
4. Statement of each legal or factual question alleged to be at issue and their relevance to the decision;
5. Designation of the specific factual areas to be adjudicated and the hearing time established for that adjudication;
6. Information supporting the request or other written documents relied upon to support the request shall be submitted unless it is already in the administrative record;
7. Specific references to the contested conditions, as well as suggested revised or alternative conditions which, in the judgment of the requester, would be required to implement the purposes and policies of the Act and this chapter.

**\*[d) No project may commence pending completion of all appeal processes.]\***

#### 7:45-4.2 **\*[Decision]\*\*Action\*** on request for hearing

(a) The Department shall determine whether a request for a contested case hearing should be granted. In making such determination, the Department shall evaluate the request to determine whether a contested case, as defined by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., exists and whether there are issues of fact which, if assumed to be true, might change the Commission's decision. Where only issues of law are raised by a request for a hearing, the request will be denied.

(b) If the Department grants a request for an adjudicatory hearing, the Department shall identify those contested conditions for which an adjudicatory hearing has been granted. The Department shall set forth these conditions in writing and serve notice in accordance with N.J.A.C. 7:45-4.3. Conditions which are not contested or for which the Department has denied the hearing request shall not be **\*[affected by or]\*** considered at the hearing.

(c) If the Department grants a request for a hearing, in whole or in part, in regard to a notice of decision, then any other request for a hearing in regard to that notice shall be treated as a request to be a party and the Department shall grant any such request which meets the requirements of N.J.A.C. 7:45-4.1(c).

(d) If a request for a hearing is denied in whole or in part, the Department shall briefly state the reasons. Such denial shall constitute the final action of the Department.

**\*[e) The Department may, upon request and for good cause shown, stay the issuance of the Certificate of Approval under N.J.A.C. 7:45-3 pending a final decision on the appeal.\***

#### 7:45-4.3 Notice of hearing

Public notice of the grant of a hearing shall be given by mailing a copy to the applicant, municipality and municipal approving agency.

## ENVIRONMENTAL PROTECTION

#### 7:45-4.4 Conduct of hearing

Hearings shall be governed by procedures described in "New Jersey Uniform Administrative Procedure Rules, 1980", N.J.A.C. 1:1.

### SUBCHAPTER 5. STORM DRAINAGE AND WATER QUALITY IMPACT REVIEW

#### 7:45-5.1 Purpose and scope of review

(a) The Commission shall review projects that produce storm water runoff that will drain into the Park, either directly or indirectly through a stream. All projects within Zone A and Zone B of the Review Zone, except those projects expressly exempted by this chapter or waived by the Commission, shall be subject to review for their drainage impact on the Park.

(b) This subchapter requires a degree of detention storage which will provide a positive reduction in runoff from small to moderate sized storms. The Commission will accept, however, as an alternative, municipal or county requirements under which required stormwater detention will control all storms of up to 100 year frequency so that there will be no increase in the maximum rate of runoff which would have occurred from such a storm without the development. In this case, it will not be necessary to provide for a reduction in any storm below that which would have occurred without the development. The *retardation of runoff by detention must encourage the holding of storm water runoff on the project's site, as close as practicable to its source.* This detention may be accomplished by detention basins, or by equivalent alternative methods, as explained in N.J.A.C. 7:45-5.4.

#### 7:45-5.2 Submission requirements

(a) Projects may be eligible for peremptory approval as described in N.J.A.C. 7:45-2.4. For projects in Zone B which are eligible for peremptory approval, submission materials will be limited to a completed copy of the form supplied by the Commission and the data described in (b), (e), (f)1 and (f)3 below. Projects in Zone A shall comply with all submission requirements regardless of their eligibility for peremptory approval.

(b) Except for minor projects which are additions or alterations to existing structures, the applicant shall submit to the Commission a topographic base map of the site prior to improvement at a scale of one inch = 200 feet or greater, showing two foot contour intervals for slopes of 10 percent or less, and five foot contour intervals for slopes greater than 10 percent. Where such information is not available, the applicant may request Commission approval of some other contour interval. The map shall indicate at least the following:

1. Existing **\*[and proposed]\*** watersheds;
2. **\*[Marshlands;]\*\*Freshwater wetlands as defined in the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. and implementing rules at N.J.A.C. 7:7A-1.4, now in effect or as may subsequently be amended;\***
3. Outlines of woodland cover;
4. Existing man-made structures;
5. Roads;
6. Utilities;
7. Bearing and **\*[distances]\* \*length\*** of property lines; and
8. Significant natural and man-made features not otherwise shown.

(c) Applicants shall submit a map at a scale of one inch = 400 feet or greater to reflect current conditions, showing the relationship of the proposed development to significant features in the general surroundings. The map shall indicate the following:

1. Roads and pedestrian ways;
2. Access to the site;
3. Adjacent land uses;
4. Existing open space;
5. Public facilities;
6. Landmarks and places of architectural and historic significance;
7. Utilities;
8. The Park (or the direction to the Park);
9. Drainage (including, specifically, streams and other surface water shown on USGS maps); and
10. Other significant features not otherwise shown.

(d) The applicant shall submit a written and graphic description of the natural and man-made features of the site and its environs. This description shall include a discussion of soil conditions, slopes, wetlands, and vegetation on the site. Particular attention shall be given to unique, unusual, or environmentally sensitive features and to those that provide particular opportunities or constraints for development.

(e) Except for minor projects which are additions or alterations to existing structures, the applicant shall submit a project description and site plan map (or maps) at the scale of the topographic base map showing changes proposed and a written description of the site plan with a justification of proposed changes in natural conditions. The map shall include:

1. Two foot contours indicating the finished slopes of the land;
2. The location and size of proposed buildings, roads, parking areas, utilities, structural facilities for detaining or recharging stormwater and sediment control, and other permanent structures;
3. The location of any 100 year flood lines on the site;
4. Any streams within 100 feet of any part of the project site;
5. Areas where alterations in the existing terrain, cover and grade are proposed; and
6. Proposed changes in natural cover, including lawns and other landscaping.

(f) For minor projects, details of the proposed plan to control and dispose of surface water shall be submitted. For major projects that will include facilities for storm water detention, the following information, including a map or maps of a suitable scale, shall be provided:

1. Total area to be paved or built upon, estimated land area to be occupied by water detention facilities and the type of vegetation thereon, and details of the proposed plan to control and dispose of surface water;
2. Appropriate measure to control velocity and erosion from outlets or discharge points;
3. Details of all water detention plans during and after construction, including discharge provisions, discharge capacity for each outlet at different levels of detention and emergency spillway provisions with maximum discharge of each spillway;
4. Maximum discharge and total volume of runoff which would occur from the project area without the improvement for the following storms:
  - i. The one and one quarter inch of rainfall occurring within a two-hour storm for determining water quality protection; and
  - ii. The flood and erosion control standard for detention will require that volumes and rates be controlled so that after development the site will generate no greater peak runoff from the site than prior to development, for a two, 10 and 100 year storm considered individually. These design storms shall be defined as a 24-hour storm using the rainfall distribution recommended by the U.S. Soil Conservation Service procedures **\*(such as)\* \*and making all calculations in conformance with the\* U.S. Soil Conservation Service, "Urban Hydrology for Small Watersheds: Technical Release No. 55"\*(\*)\* **\*latest edition\*.****
5. Maximum discharge and total volume of runoff which would occur from each of the storms described at (f)4i and ii above after complete construction of the proposed improvement and the proposed detention provisions; and
6. Computations fully substantiating the information in this subsection including the assumptions and bases thereof.

(g) The applicant shall submit a statement from a licensed engineer of the State of New Jersey that he has reviewed or prepared the plans for the detention facility and the proposed provisions are satisfactory from a dam safety viewpoint and in accordance with any criteria or rules established by the State.

(h) The applicant shall submit any other information expressly requested by the Commission which may show the extent to which the project is in accord with the standards of review established in this chapter.

(i) Applicants for minor projects need not comply with (c), (d) and (g) above.

#### 7:45-5.3 General storm drainage and water quality standards

Plans submitted shall demonstrate careful consideration of the general and specific concerns, values and standards of the Master Plan and shall be based upon environmentally sound site-planning, engineering, architectural techniques, and, whenever feasible, incorporate features to promote on-site recharge of stormwater runoff.

#### 7:45-5.4 Specific storm drainage and water quality standards

(a) Each project subject to this chapter shall include facilities for detention of storm runoff through any feasible combination of impoundments, rooftop storage, swales, dry wells, or any other reliable engineering approaches **\*satisfactory to the Commission\*.**

(b) The detention facilities shall provide retention of site runoff for any storm up to and including the two, 10 and 100 year storm. **\*[In making computations under this subsection and also under subsection (c) below, it shall be assumed that this storm occurs after one inch of prior rainfall during the preceding 24 hours (which may be assumed to have been evacuated). Runoff greater than that for a storm of this size will be passed over an emergency spillway.]\*** **\*Runoff greater than that for a 100 year storm shall be passed over an emergency spillway. The construction sequence shall show the detention pond constructed in advance of any other soil disturbance. The pond shall act as a sedimentation basin thereafter. Surplus sediment shall be removed from the pond after construction of the project is complete.\***

(c) The outlet from the detention facility shall require 90 percent of the runoff from 1.25 inches of rainfall, falling in two hours, to be retained so that no more than 90 percent will be evacuated in less than 36 hours. The following exceptions to this subsection will be acceptable:

1. Retention will not be required in any case to any extent which would reduce the outlet size to a diameter of less than three inches.
2. Dry basins serving residential projects may allow evacuation of 90 percent in 18 hours.
3. For Class II watersheds and in cases where runoff is from a single family housing **\*[and]\* \*or\*** unimproved areas only and where the runoff enters detention basins after moving by sheet flow for at least 30 feet over lawns or leaf-mulch areas, outlets shall be designed so that detention storage when full will be 90 percent evacuated over 12 hours.
4. In all cases, multiple levels or other fully automatic outlets shall be designated and installed so that discharge rates from the development for storms less severe than the design storm will be substantially reduced from what would occur if the development were not constructed. Outlet waters from the design storm shall be discharged from the development at such locations and velocities so as not to cause additional erosion or to cause additional channels below the development.

**\*[5. As soon as more rain than specified in (c) above, but less than in (b) above, has fallen, excess storm water may be released provided that the total rate of releases does not exceed 50 percent of what would have occurred from the given storm with the site in an undeveloped condition.]\***

(d) Runoff from areas uphill or upstream from the project site may be passed across the project site without detention or storage. If it is more convenient, part or all of such water may be passed through the detention means described above and an equal amount of water that originates on the site may be passed downhill or downstream. If any such upstream water enters a detention facility provided as specified under (b) above, the amount of detention provided shall be increased accordingly. For watersheds other than Class II this exchange of water is permitted only if the site runoff is not more polluted than the detained runoff from uphill or upstream. The intention is to require retention for the full period specified in (c) above of the actual runoff from the site or its equivalent and not just of an equivalent amount of water (which may be less polluted).

(e) For purposes of controlling site runoff in accordance with (a), (b), (c) and (d) above, the site area shall be taken to include the total gross area of the development site except for the cases described in (e) 1, 2 and 3 below.

1. For residential development, less dense sites will require smaller facilities than densely developed sites of the same size. The following may be used for computation of detention storage on residential

projects, computing runoff under provisions of (b), (c) and (d) above for only a part of the total housing area as follows:

- i. One-quarter acre lots or greater density—100 percent of total area;
- ii. One-half acre lots—80 percent of total area;
- iii. One acre lots—65 percent of total area;
- iv. Two acre lots or less density—50 percent of total area;
- v. For the other fractions of acre lots, the corresponding equivalent site areas shall be interpolated.
- vi. With regard to the unimproved portions of the site area, the runoff shall be handled in accordance with provisions of (d) above.

2. For nonresidential projects with impervious surfaces covering less than 30 percent of the site, a reduction in area used for computations of detention storage may be allowed, as follows:

- i. Thirty percent or more of site impervious—100 percent of site used;
- ii. Ten percent or less of site impervious—33 percent of site used;
- iii. Intermediate values may be interpolated.

3. Where the project consists of two phases as listed below in (e)3i and ii, the detention requirements for both phases may be computed on the same basis as (i) below:

- i. New construction which requires provision of storm drainage under the terms of this chapter; and
- ii. Repair or rehabilitation of structures and surfaces which does not result in increasing the extent of impervious areas or in rendering existing surfaces less impervious.

(f) If part of the site is permanently dedicated to natural vegetative growth, without restriction, improvement or control of any kind, this area may be excluded from all calculations.

(g) If detention basins or other detention facilities are provided through which water passes at times other than following rainfall, the Commission should be consulted concerning design criteria.

(h) Outlets from detention facilities shall be designed to function without manual, electric, or mechanical controls. Outlet waters shall be discharged at such locations and velocities so as not to cause additional erosion or cause additional channels below the development.

(i) The retention site runoff as required by this chapter will result in the accumulation in the detention basin of considerable amounts of sediment, including particulate polluting substances and debris. Provisions shall be made for periodic removal and disposal of accumulated solid materials in accordance with law. Computations for storage capacity shall include estimates for one year's accumulation of solid materials.

(j) Responsibility for operation and maintenance of detention facilities installed, including periodic removal and disposal of accumulated particulate material and debris, unless assumed by a governmental agency, shall remain with the owner of the property and shall be passed to any successor owner. In the case of developments where lots are to be sold, permanent conservation and maintenance easements *\*[satisfactory to the Commission shall be executed to ensure continued performance of these obligations.]\** ***\*to ensure continued performance of these obligations shall be completed and executed by the owner of the property on forms provided by the Commission.\****

(k) If local ordinances or the approved provisions of a water quality management plan require a larger design storm, more detention storage or lower release rates than those specified in this section, then the stricter requirements shall prevail, the provisions specified herein being considered as minima and not maxima.

(l) Where the provisions of separate detention facilities for a number of single sites may be more expensive and more difficult to maintain than provision of joint facilities for a number of sites, the applicant may request that the Commission consider provision of joint detention facilities which will fulfill the requirements of this chapter. In such cases, a properly-planned staged program of detention facilities shall be submitted to the Commission in which compliance with some requirements may be postponed at early stages while preliminary phases are being undertaken and construction funds accumulated.

7:45-5.5 Alternative standards for Class II watershed

*\*[(a)]\** Detention facilities located in a Class II watershed will be reviewed in accordance with the standards in N.J.A.C. 7:45-5.4(a) with modifications described in N.J.A.C. 7:45-5.4(c) and (d). The applicant will be required to provide detention facilities that regulate flooding but will not be required to address water quality. For purposes of computing runoff, all lands in the site shall be assumed, prior to development, to be in good condition (if the lands are pastures, lawns or parks), with good cover (if the lands are woods), or with conservation treatment (if the land is cultivated), regardless of conditions existing at the time of computation. ***\*As used in this section, the terms "good condition," "good cover" and "conservation treatment" shall have the meaning defined in Soils Conservation Technical Release #55, dated 1986, prepared by the United States Soil Conservation Service now in effect or as may hereafter be amended.\****

7:45-5.6 Applicability of storm drainage and water quality standards

(a) The storm drainage and water quality standards do not apply in the following instances:

1. General standards: Zone B minor projects;
2. Standards for storm water retention: Minor projects in both Zones A and B;
3. Alternative standards for certain watersheds: Minor projects in both Zones A and B; and
4. Standards for stream corridors: Minor projects in both Zone A and B.

#### SUBCHAPTER 6. *\*[STREAM CORRIDOR IMPACT]\** *\*[RESERVED]\**

*\*[7:45-6.1 Scope of review*

(a) Except for specific projects expressly waived by the Commission pursuant to N.J.A.C. 7:45-11.2, all major projects within Zone A and/or Zone B of the Review Zone shall be subject to review by the Commission for stream corridor preservation if the project includes a portion of the stream corridor of any of the following streams or their tributaries:

1. Alexauken Creek
2. Assunpink Creek
3. Beden's Brook
4. Duck Pond Run
5. Fiddler's Creek
6. Heathcote Brook
7. Jacob's Creek
8. Lockatong Creek
9. Millstone River
10. Moore's Creek
11. Shabakunk Creek
12. Shipetauken Creek
13. Simonson Creek
14. Six Mile Run
15. Stony Brook
16. Swan Creek
17. Ten Mile Run
18. Wickecheoke Creek

7:45-6.2 Permitted uses within stream corridors

(a) Only the following uses shall be permitted within stream corridors:

1. Cultivation and farming (including truck gardening and harvesting of any wild crops such as marsh hay, ferns, moss, berries or wild rice) according to the best management practices of the Soil Conservation Service or the State Soil Conservation Committee.
2. Pasture and controlled grazing of animals in accordance with conservation practices approved by the Soil Conservation Service or the State Soil Conservation Committee.
3. Outdoor plant nursery, vineyards, and/or orchards in accordance with soil conservation practices approved by the Soil Conservation Service or the State Soil Conservation Committee.
4. Wildlife sanctuary, woodland preserve, and arboretum, except facilities subject to damage by flooding.

5. Game farms, fish hatcheries, or hunting and fishing reserves, operated for the protection and propagation of wildlife, but excluding enclosed structures.

7:45-6.3 Prohibited uses within the stream corridors

(a) The following are among the prohibited uses within the stream corridor:

1. New construction or replacement of free standing structures, buildings and retaining walls not in the public interest.
2. On-site sewage disposal systems.
3. Any solid or hazardous waste facilities, as defined in N.J.A.C. 7:26 including but not limited to sanitary landfills, transfer stations, wastewater lagoons and impoundments.
4. Junk yards, commercial and industrial storage facilities and the open storage of vehicles and materials.
5. Barns, stables, feedlots, barnyards, poultry buildings, and farm waste disposal facilities.
6. Parking facilities and roads that are parallel with the stream.
7. Detention or retention basins.

7:45-6.4 Conditional uses within the stream corridors

(a) The following uses may be permitted in the stream corridors if the applicant demonstrates to the satisfaction of the Commission that the proposed use complies with the Master Plan and this chapter.

1. Recreational use, whether open to the public or restricted to private membership, such as parks, camps, picnic areas, golf courses, fishing areas, hiking, bicycle and bridle trails, sport or boating clubs, not to include enclosed structures, but permitting piers, docks, floats, or shelters usually found in developed outdoor recreational areas;
2. Outlet installations for sewerage treatment plants and sewage pumping stations;
3. Private or public water supply wells that have a sanitary seal, flood proofed water treatment facilities, or pumping facilities;
4. Quarrying, excavating, digging, dredging or grading when incidental to permitted structures or uses including stream cleaning, and stream rehabilitation work undertaken to improve hydraulics or to protect public health;
5. Dams, culverts and bridges that have received approval from the appropriate municipal, county and State agencies having such authority;
6. Sanitary or storm sewers;
7. Impoundment basins;
8. Utility transmission lines, installed during periods of low stream flow according to soil erosion and sediment control practices approved by the Federal Soil Conservation Service or the State Soil Conservation Committee and in a manner which will not impede flows or pond water;
9. Structures, buildings and retaining walls comprising part of a regional flood retention project, water supply impoundments, culverts, or bridges; and
10. Roads that cross the stream corridor as directly as feasible.

7:45-6.5 Local stream corridor ordinance

When the Commission determines that a municipality or county has adopted a stream corridor ordinance that is more stringent than this subchapter, the Commission shall apply the standards set forth in the ordinance for the review of a project for stream corridor impact.]\*

SUBCHAPTER 7. DETENTION FACILITIES IN FLOOD HAZARD AREAS

7:45-7.1 Applicability

This subchapter applies to \*[those]\* **\*all\*** watersheds outside the stream corridor but within the Review Zone.

7:45-7.2 Standards of review of detention facilities in flood hazard areas

(a) The following standards pertain to the review of detention facilities in flood hazard areas:

1. Whenever practicable, developments and their storm water detention facilities should be beyond the extent of the flood hazard area of a stream. Whenever that is not feasible and detention facilities are proposed to be located partially or wholly within the flood hazard

area or other areas which are frequently flooded, some storm conditions will make the facility ineffective at providing retention of site runoff. This will happen if the stream is already overflowing its banks and the detention basin, causing the basin to be filled prior to the time it is needed. In such cases the standards established in this chapter for "Storm Drainage and Water Quality" (N.J.A.C. 7:45-5) will be modified in order to give only partial credit to detention capacities located within a flood hazard area. The credit will vary in a ratio intended to reflect the probability that storage in a detention basin will be available at the time a storm occurs at the site.

2. Detention storage provided below the elevation of the edge of the flood hazard area will be credited as effective storage at a reduced proportion as indicated in the table below:

Elevation	Size of Drainage Area		
	*Less than Five mi <sup>2</sup>	Five-100 mi <sup>2</sup>	Greater than 100 mi <sup>2</sup>
Less than two feet below	40 percent	65 percent	90 percent
Between two feet and four feet below	25 percent	50 percent	75 percent
Over four feet below	10 percent	25 percent	50 percent

\*Area contributing floodwaters to the flood hazard area at the site in question.

This effective detention storage will be required to provide for drainage of the developed land in accordance with the criteria already established in this chapter. However, the gross storage considered for crediting will not exceed that which would be filled by runoff of a 100 year storm from the site.

3. As an alternative to (a)2 above, if the applicant can demonstrate to the satisfaction of the Commission that the detention provided would be effective, as provided in N.J.A.C. 7:45-5, during runoff from a three inch—six hour storm, peaking simultaneously at the site and on the flood hazard area, the plan will be accepted as complying with provisions of (a)2 above.

4. In making computations under (a)2 or 3 above, the volume of net fill added to the flood hazard area portion of the project's site will be subtracted from the capacity of effective detention storage provided.

5. Where detention basins are proposed to be located in areas which are frequently flooded but have not been designated by the Department as flood hazard areas, the provisions of either (a)2 or 3 above will be applied, substituting the elevation of a computed 100 year flood for the elevation of the edge of the flood hazard area in (a)2 above.

6. Highways and bridges crossing flood hazard areas \*[from side to side]\* are exempt from this subchapter.

7. Applicants shall comply with stream encroachment and flood plain rules promulgated by the Department.

SUBCHAPTER 8. VISUAL AND NATURAL QUALITY IMPACT

7:45-8.1 Submission requirements

(a) The following shall be submitted to the Commission for review of the visual **\*and natural quality\*** impact of all projects:

1. A plan showing the location, type and size or dimension of existing trees with a diameter at breast height of \*[three inches]\* **\*12 inches\*** or greater, rock masses, and other natural and man-made features, with designations of the features which will be retained in the completed development. \*[Sites that are heavily wooded shall indicate the area covered by trees, typical sizes, and types that predominate.]\*
2. A drawing of the structure(s) specifying color and type of surface materials, and showing all elevations visible from the Park.
3. A photograph of each of the existing structure(s) and a drawing showing details of proposed alterations, including notation of colors and materials to be used.
4. A site plan to scale showing the location, dimensions, and arrangements of all open space and yards, type of paving materials, methods to be employed for visual screening, and proposed grades.

7:45-8.2 General standards of review for visual and natural quality impact

(a) The Commission shall review all projects in Zone A to determine if the project is in accord with the goals for the Park as defined in the Park's Master Plan. The visual and natural quality impact review is intended to assure that development within Zone A is not harmful to the character of the environmental types identified in the Master Plan as comprising the Park. The environmental types are:

1. Natural: Sign of man's impact are non-existent or slight;
2. Rural: Natural conditions dominate but unobtrusive signs of man's impact exist;
3. Suburban: A dominant feeling of open space, but that space is chiefly defined by man-made structures;
4. Urban: Enclosure by dense development;
5. Transportation: Park squeezed between roads, railroads, and river;
6. Special Node: Small areas with unique characteristics.

7:45-8.3 Review of visual and natural quality impact of major projects within Zone A

(a) Major projects are discouraged from those portions of Zone A that comprise the Natural, Rural, Transportation, and Special Node Environments of the Park. Where major projects are proposed for the above-cited Review Zone environments, the Commission will not grant approval unless special compensatory measures that mitigate the project's potential for harmful impact on the Park are provided. Examples of such compensatory measures might include:

1. Increased set-back distances from the Park;
2. \*[Dedication of at]\*\*At\* least 40 percent of the total project site **\*be made available\*** for open space for recreation or conservation purposes, and location of that open space near the Park;
3. Extensive landscape development;
4. Development of circulation patterns that direct traffic away from the Park;
5. Noise abatement measures;
6. Improvements to adjoining portions of the Park.

(b) In those cases where the far banks of the Delaware River, the Raritan River, and Lake Carnegie are closer than 1000 feet to the center line of the Canal, those banks shall be the limit of Zone A.

7:45-8.4 Design standards for review of visual and natural quality impact

(a) **\*Except as provided in N.J.A.C. 7:45-8.3,\*** \*[Major]\* **\*major\*** and minor projects in Zone A shall be set back from the Park sufficiently far so that the visual and natural quality of the Park is not adversely affected. The following setbacks\*, **all of which are from the nearest boundary of the Canal Park,\*** are required unless the Commission approves an alternative:

1. In urban environments there are no minimum setbacks except as may be prescribed by municipal ordinances.
2. In suburban and transportation environments all structures shall be located 200 feet or more from the Park.
3. In natural and rural environments all structures shall be located 250 feet or more from the Park.
4. In any area where existing vegetation does not provide adequate screening, the project shall include landscaping, or a greater setback, or both, to project the Park's visual environment.

(b) Major and minor projects in Zone A shall maintain a reasonable height and scale relationship to nearby structures or vegetation. The following standards will be required:

1. For urban environments, the height of structures may vary according to the height of existing structures that have a visual relationship to the proposed structure.
2. For all other environments, structures shall not be visible above existing tree canopy as viewed from the Park. Where such canopy does not exist, or consists of immature vegetation, structures shall be limited to a height of 40 feet.

(c) For major projects in Zone A the exterior appearances of a project shall be in keeping with the character of the Park's individual environments. The following standards shall apply to the design of the exterior appearance of major projects in Zone A:

1. Colors used shall harmonize with the man-made or natural surroundings of the project and shall be typical of colors found in the Park environment.

2. Building materials and texture shall harmonize with the surrounding man-made and natural materials.

(d) For major and minor projects in Zone A, other visual and natural quality impact standards are as follows:

1. Electric, telephone, cable television, and other such lines and equipment shall be underground or otherwise not visible from the Park. Exception may be requested from the Commission for above-ground terminals, transformers, and similar facilities, and for the extension of service in an existing development.

2. Exposed storage areas, out-buildings, exposed machinery service areas, parking lots, loading areas, utility buildings, and similar ancillary areas and structures shall either be completely concealed from view from the Park or designed according to this chapter applied to other structures.

3. All commercial signs and outdoor advertising structures in excess of two square feet surface area shall comply with the following standards:

- i. In urban and transportation environments, no freestanding signs shall be erected within 200 feet of the Park boundary;
- ii. In natural or rural environment, no sign shall be visible from the Park;
- iii. No signs or other advertising device of any size with moving or moveable parts or with flashing, animated, or intermittent illumination shall be visible anywhere within the Park;
- iv. No freestanding sign or other advertising or part thereof visible from the Park shall be more than 200 feet above ground level.

4. Wherever possible, natural terrains, soils, and vegetation should be preserved. New vegetation and soils should be native to the environment in which they are to be placed.

5. Projects should be compatible in scale, height, site-planning and color with any officially designated Federal, State, or local historic site or district.

SUBCHAPTER 9. **\*[TRAFFIC IMPACT]\*\*(RESERVED)\***

\*[7:45-9.1 Scope of review

Major projects within Zone A and Zone B of the Review Zone will be reviewed for their traffic impact potential on the Park. All proposals for new or widened roads in the Review Zone will be reviewed.

7:45-9.2 Review of major projects

In reviewing major projects in any part of the Review Zone, the Commission will consider the impact from these projects on roads that cross the Park or are in the Park's immediate vicinity. The applicant, upon request by the Commission, shall submit a traffic impact study which shows the impact that the Park will receive as a result of the project's completion. If the Commission determines that the project will have an adverse impact on the Park, the applicant shall include improvements to the region's road pattern that will direct traffic away from the Park.

7:45-9.3 Review of road construction, road improvements, and new traffic loads

(a) The Commission will not approve projects that include new crossings of the Canal unless the applicant demonstrates to the satisfaction of the Commission that the project conforms with the following goals:

1. A new interstate or similar major road crossing shall relieve congestion on existing local crossings.
2. Any new local crossing shall eliminate an existing local crossing.
3. The materials, colors, size, and design of the crossing shall be compatible with the Park.
4. Recreational access to the Park and recreational continuity within the Park shall be accommodated by new crossings.
5. Noise retardation measures shall be utilized wherever appropriate.
6. Connections between new crossing roads and existing or new parallel roads shall not increase traffic flow on the parallel roads.

(b) Proposals for new or improved roads in Zone A and B that will substantially increase vehicular traffic to roads adjacent to the Canal will not be approved unless the applicant can demonstrate to the satisfaction of the Commission that:

1. Recreational access to the Park is not impeded;
2. Historic features of the Park are not adversely impacted;
3. The ecological character of the Park is not adversely impacted; and
4. The increased traffic will not have a visual or noise impact on the Park.]\*

#### SUBCHAPTER 10. \*[NOISE CONTROL]\*\*(RESERVED)\*

##### \*[7:45-10.1 Scope of review

The Commission shall review all major and minor projects which are wholly or partly within Zone A to determine their noise impact on the Park.

##### 7:45-10.2 Noise impact statement

For each project described in N.J.A.C. 7:45-10.1, the applicant shall submit to the Commission a noise impact statement describing the anticipated noise impact of the project on the Park, and indicating by reference to site plan diagrams, architectural plans or other documents required by the Commission, how the noise produced or likely to be produced by the project will be abated.

##### 7:45-10.3 Standards for review of noise impact

The applicant shall establish to the satisfaction of the Commission that the noise produced or likely to be produced by the project will be abated to levels in accordance with N.J.A.C. 7:29-1 and N.J.A.C. 7:29B-1 promulgated by the Department pursuant to the Noise Control act of 1971, N.J.S.A. 13:1G-1 et seq. Federal Highway Administration/New Jersey Department of Transportation standards shall be applied in the review of highway noise.]\*

#### SUBCHAPTER 11. WAIVER OF GOVERNMENTAL AND PRIVATE PROJECTS REVIEW

##### 7:45-11.1 Waiver of storm drainage and water quality impact review for governmental and private projects

(a) Governmental and private projects otherwise subject to review by the Commission for storm drainage and water quality impact may be waived from such review if the applicant establishes to the satisfaction of the Commission that:

1. The project will not adversely affect the surface waters of the Park under either storm or normal conditions; and
2. The groundwater effects produced by the project are unlikely to measurably affect the quality of the surface waters or groundwaters of the Park.

##### \*[7:45-11.2 Waiver of stream corridor impact review for governmental and private projects

(a) Governmental and private projects otherwise subject to review by the Commission for stream corridor impact may be waived from such review if the applicant establishes to the satisfaction of the Commission that:

1. The project will not have a harmful effect upon the stream corridor's present ability to function as a buffer for the stream's ecological health and as a natural area; or
2. The project incorporates environmentally sound site planning techniques, or preserves other natural areas, either of which can be demonstrated to have an equivalent effect as would compliance with this chapter.]\*

##### 7:45-11.\*[3]\*\*2\* Waiver of visual and natural quality impact review for governmental and private projects

(a) Governmental and private projects otherwise subject to review by the Commission for visual and natural quality impact may be waived from such review if the applicant establishes to the satisfaction of the Commission that visual screening will continue to exist in the future, and:

1. The topography of the land screens the entire project; or
2. Existing structures screen the entire project; or
3. Vegetation screens the entire project during the winter season.

##### \*[7:45-11.4 Waiver of traffic impact review for private and governmental projects

Private and governmental projects otherwise subject to review by the Commission for traffic impact will be waived for such review if the applicant establishes to the satisfaction of the Commission that the project will not have a direct traffic impact on the Park.]\*

##### 7:45-\*[11.5]\*\*11.3\* Waiver of reconstruction or minor alteration review for governmental and private projects

(a) Governmental and private projects otherwise subject to review by the Commission for reconstruction or minor alterations may be waived from such review if the applicant establishes to the satisfaction of the Commission that:

1. The project consists solely of the reconstruction of a previously existing structure which was partially destroyed by fire, flood, or other natural disaster, and that the reconstruction will not increase the use or the exterior dimensions of the structure. Structures which are totally destroyed by such natural disasters are not eligible for waiver and remain eligible for review; or
2. The project consists solely of alterations to an existing structure and will not increase the use or the exterior dimensions of the structure.

##### 7:45-\*[11.6]\*\*11.4\* Hardship waiver for governmental and private projects

The Commission may, at its discretion, waive review or waive any requirement of this chapter, upon a clear and convincing demonstration by the applicant that application of the review procedure, or of a specific requirement of this chapter, would result in extreme economic hardship or extraordinary and unjustified expense, and that the project will not impair the intent and purpose of the Master Plan or this chapter.

##### 7:45-\*[11.7]\*\*11.5\* Exclusivity of waiver

Waiver of review for a specific impact of a governmental or private project does not constitute a waiver of review for any other impact pursuant to this chapter.

#### SUBCHAPTER 12. SEVERABILITY

##### 7:45-12.1 Severability

If any portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

## LAW AND PUBLIC SAFETY

### DIVISION OF CONSUMER AFFAIRS

(a)

#### BOARD OF DENTISTRY

##### Complaint Review Procedures

##### Adopted Amendment: N.J.A.C. 13:30-8.5

Proposed: November 7, 1988 at 20 N.J.R. 2680(a).

Adopted: December 8, 1988 by the Board of Dentistry,

Arnold Graham, D.D.S., President.

Filed: January 4, 1989 as R.1989 d.63, **without change**.

Authority: N.J.S.A. 45:6-3.

Effective Date: February 6, 1989.

Expiration Date: April 15, 1990.

The Board of Dentistry afforded all interested parties an opportunity to comment on the proposed amendment to N.J.A.C. 13:30-8.5, relating to the complaint review procedure. The official comment period ended on December 7, 1988. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on November 7, 1988 at 20 N.J.R. 2680(a). Announcements were also forwarded to the Star Ledger, Trenton Times, Asbury Park Press and Bergen Record, newspapers of general circulation, and to over 50 interested individuals.

A full record of this opportunity to be heard can be inspected by contacting the Board of Dentistry, Room 321, 1100 Raymond Boulevard, Newark, New Jersey 07102.

**Summary of Public Comments and Agency Responses:**

Two comments were received during the official 30 day comment period.

One commenter, from the New Jersey Dental Association, verbally expressed opposition to any change. The other commenter offered written commendation for the amendment since it would ameliorate a serious "malfunction" and assure the civil rights of dentists.

As stated in the notice of proposal, the Board's purpose, in deleting the complaint book requirement, is to avoid what may be an untoward and unintended result of a literal reading of the "Right to Know" law.

Full text of the adoption follows.

13:30-8.5 Complaint review procedures

(a) Complaints of alleged neglect, malpractice or excessive pricing in the practice of dentistry shall be in writing.

1.-2. (No change.)

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

**(a)**

**BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS**

**Contract to Provide Professional Services**

**Adopted New Rule: N.J.A.C. 13:40-10.1**

Proposed: September 6, 1988 at 20 N.J.R. 2243(b).

Adopted: December 15, 1988 by the Board of Professional Engineers and Land Surveyors, Joseph Wiseman, P.E., President.

Filed: January 4, 1989 as R.1989 d.64, **without change.**

Authority: N.J.S.A. 48:8-27 et seq., specifically 45:8-28(e).

Effective Date: February 6, 1989.

Expiration Date: September 3, 1990.

The Board of Professional Engineers and Land Surveyors afforded all interested parties an opportunity to comment on the proposed new rule, N.J.A.C. 13:40-10.1, relating to contracting to provide professional services. The official comment period ended on October 6, 1988 and was extended to November 6, 1988 at the request of the New Jersey Society of Professional Engineers. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on September 6, 1988 at 20 N.J.R. 2243(b). Announcements were also forwarded to the Star Ledger and the Trenton Times, newspapers of general circulation; the New Jersey Society of Professional Engineers; the New Jersey Society of Professional Land Surveyors; the New Jersey Society of Women Engineers; and other interested individuals.

A full record of this opportunity to be heard can be inspected by contacting the Board of Professional Engineers and Land Surveyors, Room 317, 1100 Raymond Boulevard, Newark, New Jersey 07102.

**Summary of Public Comments and Agency Responses:**

Three comments in opposition to the new rule were received by licensees during the official comment period which expired on October 6, 1988. In response to a request by the New Jersey Society of Professional Engineers, the comment period was extended to November 6, 1988. No comments were received during the extended comment period.

The commenters believe that the new rule will lower the standards of the engineering profession; is beyond the Board's authority; will not provide protection for the consumers; and highlights a statutory flaw.

In response to these comments, the Board points out that the new rule is a "stopgap" measure which has been Board policy for the last seven years, since the current law allows the offering of both engineering and land surveying services by an entity that does not employ licensed individuals. Additionally, the Board believes that this rule will provide clarification of laws governing the profession which are frequently misunderstood and misinterpreted by licensees. The rule attempts to protect consumers who assume that because a firm can advertise to provide engineering and land surveying services that the firm must have qualified licensed individuals on staff. The rule applies not only to unlicensed corporations and proprietorships, but encompasses legitimate engineering and land surveying firms wishing to practice in both professions.

Full text of the adoption follows.

**SUBCHAPTER 10. CONTRACT TO PROVIDE PROFESSIONAL SERVICES**

13:40-10.1 Contract requirement

(a) Any corporation, firm, partnership or association which does not have an executive officer, if a corporation, or a member, if a firm, partnership or association, who is licensed to practice engineering or land surveying in this State and which offers or performs engineering or land surveying services pursuant to N.J.S.A. 45:8-27 shall, prior to the offer or performance of said services, have a written contract with a New Jersey licensed professional engineer or land surveyor. Such contract shall require the licensed professional engineer or land surveyor to be in responsible charge of the engineering or surveying work contracted for and shall be consistent with the Board's enabling legislation (N.J.S.A. 45:8-27 et seq.) and all rules adopted pursuant thereto.

(b) A licensed professional engineer or a licensed land surveyor rendering engineering or surveying services for a corporation, firm, partnership or association covered by this section shall not perform such services unless the written contract required by this section is present.

**(b)**

**Automotive Dispute Resolution**

**Adopted New Rules: N.J.A.C. 13:45A-26**

Proposed: November 7, 1988 at 20 N.J.R. 2681(b)

Adopted: December 22, 1988 by James J. Barry, Jr., Director, Division of Consumer Affairs

Filed: January 4, 1989 as R.1989 d.65 **with substantive and technical changes** not requiring additional public notice and comment pursuant (see N.J.A.C. 1:30-4.3).

Authority: P.L. 1988, c.123, §21.

Effective Date: February 6, 1989.

Expiration Date: December 16, 1990.

The Division of Consumer Affairs afforded all interested persons the opportunity to comment by December 7, 1988, on the proposed new rules regarding automotive dispute resolution, N.J.A.C. 13:45A-26. Notice of this opportunity appeared in the November 7, 1988 edition of the New Jersey Register, 20, N.J.R. 2681(b). A general news release containing notice of this opportunity was sent to all daily and weekly newspapers in the state, as well as broadcast media. Announcements were also forwarded to the New Jersey Law Journal, the Council of Better Business Bureaus, the Motor Vehicle Manufacturers Association, the New Jersey Automobile Dealers Association, representatives or officers of 27 motor vehicle manufacturers, and other interested parties. Comments were received from General Motors Corporation, Ford Motor Company, Nissan Motor Corporation in the U.S.A., and Kevin Campbell.

A full record of this opportunity to be heard can be inspected by contacting:

James J. Barry, Jr., Director  
Division of Consumer Affairs  
1100 Raymond Boulevard, Room 504  
Newark, New Jersey 07102

**Summary of Public Comments and Agency Responses:**

COMMENT: Ford Motor Company suggested that "out of service" be defined as the number of days a motor vehicle is required to be at the dealership; delays caused by the consumer should not be counted as days out of service.

RESPONSE: The definition has been expanded to provide that such delays not be counted as days out of service.

COMMENT: (Ford) The rules should state that a consumer must cooperate reasonably to provide the opportunity for the final repair attempt. "In almost all cases, this notification will be the first indication the manufacturer has received that a continuing problem exists with the motor vehicle."

RESPONSE: All that the Lemon Law requires is that the consumer provide notice to the manufacturer of an impending claim; the division does not wish to go beyond the statutory provision.

COMMENT: (Ford) It is very important that a consumer include in the chronology of repair attempts a statement that a particular defect is continuing.

RESPONSE: Such a statement is mandatory in the application, pursuant to N.J.A.C. 13:45A-26.7(b)5ii.

COMMENT: (Ford) The manufacturer should receive the application with the initial notice, particularly since the manufacturer is required to respond within 10 days. Also, the requirement that the manufacturer provide a response to each of the statements set forth in the consumer application should be more detailed; for example, the manufacturer could be required to state its position with regard to each continuing nonconformity alleged by the consumer.

RESPONSE: The Division agrees with the first suggestion and have inserted wording to that effect in N.J.A.C. 13:45A-26.10(f). However, the Division believes it is clear that "response" covers a statement of position with regard to each alleged nonconformity.

COMMENT: (Ford) Regarding the refund computation in N.J.A.C. 13:45A-26.11, excluding from the refund amount only those over-allowances that grossly exceed the true value of the traded-in vehicle is neither fair nor reasonable. The word "grossly" should be deleted; "grossly exceeds" and "grossly disproportionate . . . to the true value of the consumer's motor vehicle" create a standard too high for the manufacturer to satisfy.

RESPONSE: The Division believes that the language as proposed is fair, the standard reasonable, and the final refund amount appropriately determined by the administrative law judge on the basis of all evidence.

COMMENT: (Ford) N.J.A.C. 13:45A-26.11(b)1 should be revised to indicate that a reasonable allowance for use should be calculated from the mileage at the time the consumer first presented the motor vehicle to the dealer for correction of the continuing nonconformity that served as the basis of, or gave rise to, the action.

RESPONSE: The Division has reviewed the provision and considers the language clear as stated.

COMMENT: (Ford) The manufacturer should be provided a minimum of 30 days to comply with a final decision, with discretion by the administrative law judge to increase the time as appropriate on a case by case basis.

RESPONSE: The Division prefers to leave the date for compliance to the discretion of the administrative law judge.

COMMENT: (Ford) N.J.A.C. 13:45A-26.12(d) should state that the manufacturer is liable for penalties if it fails to comply or appeal to the Appellate Division within a specified period of time.

RESPONSE: The provision follows the exact wording in the statute.

COMMENT: (Ford) A section addressing the summary procedure should be included; suggestions were offered as to the hearing.

RESPONSE: The Office of Administrative Law is promulgating its own set of rules for the hearing process (see the January 17, 1989 New Jersey Register at 21 N.J.R. 91(a)).

COMMENT: Kevin Campbell, a concerned citizen, commented that there should be a section specifically requiring the manufacturer's informal dispute settlement process to be in compliance with statutory requirements in the Lemon Law.

RESPONSE: The Division considers the proposed rules as to manufacturers' informal dispute settlement procedures sufficient at present.

COMMENT: Mr. Campbell also stated that N.J.A.C. 13:45A-26.10(d) seems to be in conflict with subsection (g).

RESPONSE: For clarity, "with consent by the consumer" has been added in subsection (g).

COMMENT: Regarding N.J.A.C. 13:45A-26.3(c), Nissan Motor Corporation in U.S.A. commented that while it recognizes that a consumer may need to have his or her vehicle serviced out-of-State, requiring non-New Jersey dealers to follow practices which may be different from actions required in their own states may lead to confusion and inconsistency. Also, Nissan believes that it is inappropriate to impose upon a manufacturer the duty of supplying a statement of repair; it should remain with the servicing dealer. General Motors, commenting on the same section, stated that neither the State of New Jersey nor General Motors has the right to define the format or content of the repair orders issued by out-of-State dealers.

RESPONSE: Under Section 6(b) of the Lemon Law, ultimate responsibility for provision of the statement of repair rests with the manufacturer, not the in-State or out-of-State service facility that may attempt repair. The Division has, however, reworded N.J.A.C. 13:45A-26.3(c) to make the contents of the statement of repair an advisory rather than mandatory list.

COMMENT: Nissan questioned the right of the Director to adopt, reject, or modify the administrative law judge's decision, stating that this seems contrary to policies governing arbitration; Nissan also termed "punitive and harsh" the \$5,000 per day fine for failure of a manufacturer timely to comply with a final decision.

RESPONSE: The Director's right to adopt, reject or modify the decision is directly conferred by the enabling legislation, which also specifies the \$5000 per day fine for noncompliance.

COMMENT: Nissan further stated that it is the Director's duty to assure that compliance has occurred rather than requiring the manufacturer to assume the duty of notifying the Division that compliance has taken place.

RESPONSE: The Division believes that it is reasonable to request such notification so that the Division's records are complete as to each case.

COMMENT: (Nissan) The twice-yearly requirement of manufacturer response to a questionnaire, for purposes of a public report on compliance with the Lemon Law, should be limited to once a year; the company also asked why the annual FTC Rule 703 Audit could not be provided to the State instead of the questionnaire.

RESPONSE: Since the Lemon Law mandates compilation and publication of a dispute resolution index every six months, a twice-yearly questionnaire is necessitated. As for the FTC Rule 703 Audit, the State prefers for consistency to have one uniform questionnaire answered by all automotive manufacturers doing business in New Jersey.

COMMENT: Nissan noted that there is no "prior resort" clause in the proposed rules nor a limitation on how many opportunities a consumer has for resolving a dispute.

RESPONSE: The Lemon Law specifically repealed a "prior resort" provision; there is a limitation on participation in the Division automotive dispute resolution system in N.J.A.C. 13:45A-26.6(c), which states that a consumer is eligible only once as to a specific motor vehicle.

COMMENT: General Motors requested that the disclosure form it has developed for use when a repurchased motor vehicle is resold, be approved as an alternative to the disclosure language prescribed in N.J.A.C. 13:45A-26.3(b).

RESPONSE: The disclosure language in the rule is mandated by statute.

COMMENT: Regarding N.J.A.C. 13:45A-26.14(c), which requires manufacturers to provide the Division with the amount or value of awards in which customers are granted a repurchase, a replacement, additional repairs, etc., General Motors stated that such awards typically involve both the manufacturer and dealer and cannot be accurately tracked. GM does keep an accurate record of cases, types of awards and timeliness of proceedings as required under 16 CFR 703 and recommends that the Division adopt those same requirements.

RESPONSE: Information as to amount of awards is necessary in order to fulfill the statutory requirements relating to the six-month dispute resolution index.

COMMENT: Mr. Campbell suggested including in the Lemon Law brochure to be distributed pursuant to N.J.A.C. 13:45A-26.4(b) any restrictions binding on the consumer, such as one-time eligibility for participation in Division's dispute resolution system. Ford Motor Company listed items of information which should be in the notification to the manufacturer of an impending claim.

RESPONSE: The brochure will contain information on these matters and will include a model notification letter covering the items mentioned by Ford.

In response to comments, the following changes were made upon adoption of these rules:

1. Wording was added to the definition of "out of service" to make clear that delays caused by the consumer could not be counted in the number of days a motor vehicle was on the premises of a repair facility.

2. In N.J.A.C. 13:45A-26.3(c), the list of items for inclusion in the statement of repair was made advisory rather than mandatory, since a question has been raised as to the Division's right to set this requirement for repair facilities located outside the State.

3. Changes in N.J.A.C. 13:45A-26.10(f) and (g), and N.J.A.C. 13:45A-26.14(d), were made for purposes of clarity and specificity.

Also, N.J.A.C. 13:45A-26.7(b)6, regarding an appearance on the papers, has been added; this provision was omitted by error from the list describing the contents of the hearing application that appeared in the original proposal.

Full text of the adoption follows (additions to the proposal indicated in boldface with asterisks \*thus\*; deletions from the proposal indicated in brackets with asterisks \*[thus]\*):

SUBCHAPTER 26. AUTOMOTIVE DISPUTE RESOLUTION

13:45A-26.1 Purpose and scope

(a) The purpose of this subchapter is to implement the Lemon Law, P.L. 1988, c. 123, by establishing an automotive dispute resolution system within the Division of Consumer Affairs in conjunction with the Office of Administrative Law. The subchapter also sets forth the method of refund computation, and details the reporting requirements and procedure for publication of compliance records of manufacturers of motor vehicles.

(b) This subchapter is applicable to:

1. All manufacturers of passenger cars and motorcycles registered in the State of New Jersey;
2. All purchasers and lessees of passenger cars and motorcycles registered in the State of New Jersey; and
3. Dealers servicing such vehicles whether their service facilities are located within or outside of the State.

13:45A-26.2 Definitions

As used in this subchapter, the following words shall have the following meanings:

"Days" means calendar days.

"Director" means the Director of the Division of Consumer Affairs.

"Dispute Resolution System" means a procedure established by the Division of Consumer Affairs and the Office of Administrative Law for the resolution of disputes regarding motor vehicle nonconformity(s) through summary administrative hearings.

"Lemon Law" means P.L. 1988, c. 123, an Act concerning new motor vehicle warranties and repealing P.L. 1983, c. 215.

"Lemon Law Unit" ("LLU") means the administrative unit within the Division of Consumer Affairs that processes Lemon Law matters.

"Motor vehicle" means a passenger automobile or motorcycle as defined in N.J.S.A. 39:1-1, that is registered in the State of New Jersey, whether purchased, leased, or repaired in the State or outside the \*state]\* \*State\*.

"Nonconformity" means a defect or condition which substantially impairs the use, value or safety of a motor vehicle.\*["]\*

"OAL" means the Office of Administrative Law.

"Out of service" means the number of days the defective motor vehicle is on the premises of a repair facility for the purpose of repairing one or more nonconformities\*; **delays caused by the consumer, such as a delay in picking up the motor vehicle from the facility after notification that it is ready, shall not be counted as days out of service\***.

"Term of protection" means within the first 18,000 miles of operation or the two years following the original date of delivery of the motor vehicle to the consumer, whichever is the earlier date.

13:45A-26.3 Statements to consumer

(a) At the time of purchase or lease of a motor vehicle in the State of New Jersey, the manufacturer, through its dealer or lessor, shall provide the following written statement directly to the consumer on a separate piece of paper, in 10-point bold-face type:

**"IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER NEW JERSEY LAW TO A REFUND OF THE PURCHASE PRICE OR YOUR LEASE PAYMENTS. FOR COMPLETE INFORMATION REGARDING YOUR RIGHTS AND REMEDIES UNDER THE RELEVANT LAW, CONTACT THE NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF CONSUMER AFFAIRS, LEMON LAW UNIT, AT 1100 RAYMOND BOULEVARD, NEWARK, NEW JERSEY 07102, TEL. NO. (201) 648-3135."**

(b) If a motor vehicle is returned to the manufacturer under the provisions of the Lemon Law or a similar statute of another state or as the result of a legal action or an informal dispute settlement procedure, the motor vehicle shall not be resold or re-leased in New Jersey unless the manufacturer provides to the dealer or lessor, and the dealer or lessor provides to the consumer prior to the resale or release of the motor vehicle, the following statement on a separate piece of paper, in 10-point bold-face type:

**"IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER'S WARRANTY AND THE NONCONFORMITY WAS NOT CORRECTED WITHIN A REASONABLE TIME AS PROVIDED BY LAW."**

(c) Each time a consumer's motor vehicle is returned from being examined or repaired during the term of protection, the manufacturer through its dealer shall provide to the consumer an itemized, legible statement of repair which indicates any diagnosis made and all work performed on the vehicle \*[and provides]\* \*; **the statement of repair should provide\*** information including, but not limited to:

1. A general description of the problem reported by the consumer or an identification of the problem reported by the consumer or an identification of the defect or condition;
2. The amount charged for parts and the amount charged for labor, if paid by the consumer;
3. The date and the odometer reading when the vehicle was submitted for repair; and
4. The date and the odometer reading when the vehicle was made available to the consumer.

(d) Failure to comply with the provisions of this section shall be a violation \*[to]\* \*of\* the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

13:45A-26.4 Lemon Law Unit

(a) There is established within the Division of Consumer Affairs a section processing Lemon Law matters, to be known as the Lemon Law Unit (LLU).

(b) The Lemon Law Unit shall upon request provide consumers with a brochure setting forth:

1. Information regarding a consumer's rights and remedies under the relevant law; and
2. The procedure to be followed in order to participate in the various dispute resolution systems.

(c) All correspondence by consumers or manufacturers to the Division of Consumer Affairs regarding Lemon Law matters shall be directed to the attention of the Lemon Law unit, as follows:

Division of Consumer Affairs  
 Lemon Law Unit  
 1100 Raymond Boulevard  
 Newark, New Jersey 07102  
 Tel. No. (201) 648-3135

13:45A-26.5 Preliminary steps

(a) To initiate a claim under the Lemon Law, written notification of the potential claim must be sent certified mail, return receipt requested, by or on behalf of a consumer, to the manufacturer of a nonconforming motor vehicle if either of the following occurs during the first 18,000 miles of operation or within 24 months after the date of original delivery, whichever is earlier:

1. Substantially, the same nonconformity has been subject to repair two or more times by the manufacturer or its dealer and the nonconformity continues to exist; or
2. The motor vehicle has been out of service by reason of repair for one or more nonconformities for a cumulative total of 20 or more days since the original delivery of the motor vehicle, and a nonconformity continues to exist.

(b) The manufacturer by law has one more opportunity to repair or correct the nonconformity within 10 days following receipt of notification from the consumer of a potential claim; if the nonconformity continues to exist after expiration of the 10-day time period and the manufacturer refuses to replace or refund the price of the vehicle, the criteria necessary to pursue a Lemon Law claim have been met. The consumer may then:

1. Refer the matter to the manufacturer for resolution through the manufacturer's informal dispute settlement procedure;
2. Refer the matter to the LLU for dispute resolution; or
3. File an action in the Superior Court. Any party to an action asserting a claim, counterclaim or defense based upon violations of the Lemon Law shall mail a copy of the initial or responsive pleading

containing the claim, counterclaim or defense to the Attorney General within 10 days after filing the pleading with the court.

#### 13:45A-26.6 Eligibility

(a) To be eligible for the Dispute Resolution System, a consumer must provide the following items to the LLU by certified mail, return receipt requested:

1. A photocopy of the consumer's notification to the manufacturer of a potential claim; and

2. A completed Application for Dispute Resolution; the form will be supplied upon request by the LLU.

(b) During any periods when forms are not available, any written request for dispute resolution following the term of protection shall be accepted by the LLU provided all information, items and statements listed in N.J.A.C. 13:45A-26.7 are included.

(c) A consumer is eligible for dispute resolution by the Division as to a specific motor vehicle only once; no further applications from that consumer relating to the same motor vehicle will be accepted if a final decision has been rendered pursuant to N.J.A.C. 13:45A-26.12(b).

#### 13:45A-26.7 Application

(a) Application for dispute resolution shall require submission of the following:

1. Information as follows:

i. The name and address of the consumer and lienholder, if any;

ii. The date of original delivery of the motor vehicle to the consumer;

iii. The mileage on the date the nonconformity was first reported to the manufacturer or its dealer; and

iv. The mileage on the date the application is mailed back to LLU.

2. A written account of the events resulting in the dispute, including description of the claimed nonconformity(s) and a chronology of the repair attempts.

3. A photocopy of the notification of a potential claim sent by or on behalf of the consumer to the manufacturer after two or more attempts to repair or 20 calendar days out of service, and a photocopy of the return receipt signed by the manufacturer's agent.

4. Photocopies of the statements of repair required by section 6(b) of the Lemon Law, to be given to the consumer by the manufacturer through its dealer, each time a motor vehicle is returned from being examined or repaired.

5. Photocopies of the agreement of sale or lease, including any stated credit or allowance for the consumer's used motor vehicle, the receipt for payment of any options or other modifications arranged, installed or made by the manufacturer or its dealer within 30 days after the date of original delivery, receipts for any other charges or fees including but not limited to:

i. Sales tax;

ii. License and registration fees;

iii. Finance charges;

iv. Towing;

v. Rental of a motor vehicle equivalent to the consumer's motor vehicle for the period when the consumer's motor vehicle was out of service due to a nonconformity; and

vi. Any other documents related to the dispute.

(b) The application must contain a statement as to the following:

1. That the consumer believes the motor vehicle's use, market value or safety is substantially impaired by the nonconformity(s) complained of;

2. That the nonconformity(s) complained of is not the result of abuse, neglect, or unauthorized modifications of the motor vehicle by anyone other than the manufacturer or its dealer;

3. That within the term of protection the manufacturer, its agent or authorized dealer failed in at least two attempts to correct the same substantial defect, or the vehicle was out of service by reason of repair for at least 20 days;

4. That the consumer gave the manufacturer written notification by certified mail, return receipt requested, of a potential claim pursuant to the Lemon Law, section 5(b); *\*[and]\**

5. That within the term of protection:

i. The consumer gave the manufacturer or its dealer at least three attempts (including the post-notification attempt) to repair substan-

tially the same nonconformity and the nonconformity continues to exist; or

ii. The vehicle was out of service by reason of repair for one or more nonconformities for a cumulative total of 20 or more days since the original delivery of the motor vehicle, the manufacturer has been given the post-notification opportunity to repair, and a nonconformity continues to exist\**.\**; *and\**

**\*6. Whether the consumer wishes to appear at the hearing in person or instead will allow a decision to be rendered by the OAL on the papers submitted by both parties, if the manufacturer does not object to a proceeding on the papers in its response pursuant to N.J.A.C. 13:45A-26.10(f).\***

#### 13:45A-26.8 Filing fee

(a) A consumer whose application for dispute resolution is accepted by the Division shall pay a filing fee of \$50.00 by certified check or money order payable to the "New Jersey Division of Consumer Affairs". The filing fee shall be nonrefundable but is recoverable as a cost if the consumer prevails.

(b) The filing fee shall be requested by the LLU when it has determined that the consumer's application is complete and that it complies with this subchapter and the Lemon Law.

#### 13:45A-26.9 Processing of applications

(a) Submitted applications shall be reviewed by the LLU for completeness and compliance with the Lemon Law and this subchapter.

1. Incomplete applications shall be promptly returned for completion to the consumer.

2. Applications not in compliance with this subchapter and the Lemon Law (including but not limited to the required number of repair attempts or the number of days out of service) will be rejected. The reason for the rejection will be sent to the consumer. No judgment will be made by the LLU as to whether the claimed defect(s) are substantiated by the evidence or whether they substantially impair the use, market value or safety of a motor vehicle.

(b) Upon receipt of the filing fee of \$50.00, the application shall be date-stamped to indicate its acceptance for dispute resolution.

#### 13:45A-26.10 Notification and scheduling of hearings

(a) Within 10 days after the effective date of this subchapter, each manufacturer of motor vehicles sold or leased in New Jersey shall forward to the Division of Consumer Affairs, Lemon Law Unit, the name, address, and telephone number of the person designated by the manufacturer to receive notices under this dispute resolution process. It shall be the duty of the manufacturer to update this information, as necessary.

(b) On the day that an application is accepted for resolution by the LLU, a notice shall be sent by certified mail, return receipt requested by the LLU to the consumer and manufacturer's designee. This notice shall indicate that the consumer's request for resolution has been accepted, and shall provide general information about the resolution process.

(c) The LLU shall immediately thereafter refer an accepted application for dispute resolution to the OAL and arrange a hearing date acceptable to all parties. The dispute resolution shall be conducted as a contested case by the OAL in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and Special Rules, N.J.A.C. 1:13A.

(d) The date of the hearing shall be no later than 20 days from the date of the notice of acceptance unless a later date is agreed to by the consumer.

(e) Notice of the date, time, and location of the hearing shall be mailed by the OAL to both parties.

(f) A copy of the application materials shall be sent by the LLU **\*simultaneously with the notice of acceptance of the application,\*** to the manufacturer's designee. Within 10 days of the notice of acceptance of the consumer's application for dispute resolution, the manufacturer shall mail by certified mail, return receipt requested, to the consumer and to the clerk of the **\*[OAL]\* \*Office of Administrative Law\*** at 185 Washington Street, Newark, New Jersey 07102, a response to each of the statements set forth in the consumer appli-

cation. **\*The response shall also state whether the manufacturer objects to a proceeding on the papers if requested by the consumer.\***

(g) Applications by the consumer or the manufacturer **\*with consent of the consumer\*** for adjournments or rescheduling of the hearing shall be made in accordance with N.J.A.C. 1:1-9.6.

#### 13:45A-26.11 Computation of refund

(a) The refund claimed by a consumer pursuant to section 4(a) of the Lemon Law, whether through the Division of Consumer Affairs automotive dispute resolution system or a manufacturers' informal dispute resolution process, shall include:

1. The total purchase or lease price of the motor vehicle including finance charges, sales tax, license fees, registration fees, and any stated credit or allowance for the consumer's used motor vehicle, provided that:

i. The full refund of purchase price that may be claimed by a consumer under section 4(a) shall not include any portion of a stated credit or allowance for the consumer's used motor vehicle that grossly exceeds the true value of the consumer's used motor vehicle.

ii. During the Office of Administrative Law hearing, a manufacturer may challenge the stated credit or allowance for the consumer's used motor vehicle. The manufacturer shall bear the burden of proof, and shall provide evidence that the purchase price included a trade-in allowance grossly disproportionate in amount to the true value of the consumer's used motor vehicle. Such evidence shall include, but not be limited to, the value of the motor vehicle as listed in the N.A.D.A. Official Used Car Guide.

2. The cost of any options or other modification arranged, installed or made by the manufacturer or its dealer within 30 days after the date of original delivery.

3. Other charges or fees, including but not limited to:

i. Reimbursement for towing, if any;

ii. Reimbursement for actual expenses incurred by the consumer for the rental of a motor vehicle equivalent to the consumer's motor vehicle for the period during which the consumer's motor vehicle was out of service due to a nonconformity; and

iii. Filing fee for participation in the Division's dispute resolution system.

(b) From the total sum of the items in (a) above, a deduction shall be made, representing an allowance for vehicle use. This deduction shall be calculated as follows:

1. Multiply the mileage at the time the consumer first presented the motor vehicle to the dealer or manufacturer for correction of the nonconformity(s) in question by the total purchase price of the vehicle (or the total lease price, if applicable), then divide by 100,000 miles.

#### 13:45A-26.12 Final decision

(a) The Director shall review the OAL proposed decision submitted by the administrative law judge who conducts the administrative hearing and shall adopt, reject, or modify the decision no later than 10 days after receipt.

(b) At the conclusion of the review period, the Director shall mail notification of the rejected, modified or adopted decision to both parties, the lienholder, if any, and to the OAL. The mailing to the manufacturer and consumer shall be by certified mail, return receipt requested. The date of mailing shall be deemed the date of the final decision.

(c) The manufacturer shall advise the Director as to its compliance with the final decision no later than 10 days following the date stated for completion of all awarded remedies.

(d) If the manufacturer unreasonably fails to comply with the decision within the specified time period, the manufacturer shall be liable for penalties in the amount of \$5000 for each day the manufacturer unreasonably fails to comply, commencing on the day after the specified date for completion of all awarded remedies.

#### 13:45A-26.13 Appeals

(a) A manufacturer or a consumer may appeal a final decision to the Appellate Division of Superior Court; a notice of appeal must be filed with the Director no later than 45 days after the date of the final decision as defined in N.J.A.C. 13:45A-26.12(b).

(b) An appeal by a manufacturer shall not be heard unless the notice of appeal is accompanied by a bond which shall be:

1. For a principal sum equal to the money award made by the administrative law judge, plus \$2500 for anticipated attorney's fees and other costs;

2. Secured by cash or its equivalent; and

3. Payable to the consumer.

#### 13:45A-26.14 Manufacturers' informal dispute resolution procedures

(a) The LLU shall compile a roster of American and foreign manufacturers of passenger automobiles and motorcycles registered in New Jersey.

(b) Manufacturers who establish or participate in an informal dispute settlement procedure shall within 30 days after the effective date of this subchapter:

1. Advise the LLU of the existence of its informal dispute settlement procedure; and

2. Send the LLU an outline of the steps that a consumer must take in order to participate in the manufacturer's informal dispute resolution procedure; the information shall include all necessary addresses and phone numbers.

(c) On the 15th of January 1990 and on every 15th of July and 15th of January thereafter, the LLU shall mail a questionnaire by certified mail, return receipt requested, to every manufacturer on the roster compiled pursuant to (a) above, requesting the following information:

1. The number of purchase price and lease price refunds requested, the number awarded by the dispute settlement body, the amount of each award and the number of awards satisfied in a timely manner;

2. The number of awards in which additional repairs or a warranty extension was the remedy, the amount or value of each award, and the number of awards satisfied in a timely manner;

3. The number and total dollar amount of awards in which some form of reimbursement for expenses or compensation for losses was the remedy, the amount or value of each award and the number of awards satisfied in a timely manner; and

4. The average number of days from the date of a consumer's initial request to use the manufacturer's informal dispute settlement procedure until the date of the decision and the average number of days from the date of the decision to the date on which performance of the award was satisfied.

(d) Failure of the manufacturer to return the completed questionnaire to the LLU within 60 days of receipt shall be a violation of this subchapter and the Consumer Fraud Act **\*N.J.S.A. 56:8-1 et seq.\***

#### 13:45A-26.15 Index of disputes

(a) The Division of Consumer Affairs shall maintain an index of all motor vehicle disputes by make and model and shall compile and maintain statistics indicating the record of manufacturer compliance with any settlement procedure decisions.

(b) The initial index and statistical record of compliance shall be made available to the public on July 1, 1990 and every six months thereafter.

(a)

**NEW JERSEY RACING COMMISSION**

**Thoroughbred Rules**

**Registration of Colors**

**Adopted Amendment: N.J.A.C. 13:70-5**

**Adopted Repeal: N.J.A.C. 13:70-5.1**

Proposed: October 17, 1988 at 20 N.J.R. 2536(a).

Adopted: December 22, 1988 by the New Jersey Racing

Commission, Bruce H. Garland, Executive Director.

Filed: January 10, 1989 as R.1989 d.74, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: February 6, 1989.

Expiration Date: February 25, 1990.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the adoption follows.

SUBCHAPTER 5. STABLE NAMES, CORPORATIONS AND  
MULTIPLE OWNERSHIPS

13:70-5.1 (Reserved) \_\_\_\_\_

# PUBLIC NOTICES

## ENVIRONMENTAL PROTECTION

(a)

### PINELANDS COMMISSION

#### Petition for Rulemaking Pinelands Land Capability Map N.J.A.C. 7:50-5.3(a)24

Petitioners: Anatole Kalinuk, Joseph S. and Adelaide Portash, Anna E. Gant, Perry C. Chudoba, P. West, Jr. and J. Weiss, 270 Development Group, Colonial Care Convalescent Center, Burnt Pine Investors, Long Road Investors, First National Bank of Toms River, Bennet Development Co., Inc., and Leisure Tech. Inc.

Authority: N.J.S.A. 13:18A-65

Take notice that on December 7, 1988, the above-noted petitioners filed a complete rulemaking petition with the Pinelands Commission requesting an amendment to the Pinelands Comprehensive Management Plan. This amendment would result in a revision to the Pinelands Land Capability Map, adopted at N.J.A.C. 7:50-5.3(a)24, to redesignate approximately 130 acres of land in Manchester Township, Ocean County, from a Rural Development Area to a Regional Growth Area designation.

The Land Capability Map graphically depicts Pinelands Management Areas which form the basis upon which different land uses and the intensity of those uses are permitted in the Pinelands. The standards governing permitted land uses and intensities of use are set forth in N.J.A.C. 7:50-5; specifically N.J.A.C. 7:50-5.26 for Rural Development Areas and N.J.A.C. 7:50-5.28 for Regional Growth Areas. In general, the types of land uses permitted in each of these two management areas are similar; however, the intensity with which those uses can be developed is substantially higher in Regional Growth Areas.

The properties subject to the petition total approximately 130 acres and are generally located in the easterly section of Manchester Township on the southerly side of State Route 37. Included are: Block 46, Lots 1, 2, 3, 4, 5, 7, 8, 10, 10.01 and 10.02; Block 46.01, Lots 1.01, 1.02 and 1.03; and Block 47, Lot 1. The properties are bounded to the east by Alexander Avenue and a subdivision commonly known as Summit Park, to the west by the Union Branch of the Toms River which forms the municipal boundary between Manchester Township and the Borough of Lakehurst, and to the south by the Central Railroad of New Jersey right-of-way.

The petitioners request the redesignation to permit a mixed use development which envisions retail, professional and other business uses along the properties' frontage on Route 37 and portions of Colonial Drive, with residential development located on other portions of the property. The intensity with which the petitioners hope to develop the property would not otherwise be permitted within a Rural Development Area.

The petitioners argue that the amendment is justified since these properties exhibit the same characteristics as other lands included in Regional Growth Areas and are bounded to the west and east by lands designated for intensive development. The petitioners further argue that the requested redesignation is consistent with the goals of the Pinelands Protection Act and the Pinelands Comprehensive Management Plan.

The lands subject to the petition are located within the Pinelands National Reserve but outside of the State Pinelands Area. As such, the Pinelands Comprehensive Management Plan includes land use recommendations governing the future use and development of the properties but the Pinelands Commission does not exercise regulatory jurisdiction to implement the Plan's recommendations. Instead, the Department of Environmental Protection abides by the Comprehensive Management Plan's land use recommendations in administering the Coastal Area Facility Review Act.

Take further notice that, pursuant to N.J.A.C. 7:50-7, this petition is being reviewed by the Executive Director and the staff of the Pinelands Commission for the purpose of formulating a recommendation to the Pinelands Commission as to how it should respond.

Interested persons who wish to comment on the petition before the Executive Director completes his review may do so by submitting written comments on or before March 8, 1989. Comments should be addressed to:

John C. Stokes  
Assistant Director  
Pinelands Commission  
P.O. Box 7  
New Lisbon, New Jersey 08064

A copy of the petition and supporting documents are on file at the offices of the Pinelands Commission, Springfield Road, Pemberton Township, New Jersey and are available for inspection between 9:00 A.M. and 5:00 P.M. on regular business days.

The Pinelands Commission will not consider or propose an amendment to the Comprehensive Management Plan until it reviews the Executive Director's recommendation. After consideration, the Commission shall determine whether or not to proceed with a rulemaking proposal pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 7:50-7.

## HEALTH

(b)

### DIVISION OF OCCUPATIONAL AND ENVIRONMENTAL HEALTH

#### ENVIRONMENTAL PROTECTION DIVISION OF ENVIRONMENTAL QUALITY

#### LABOR DIVISION OF WORKPLACE STANDARDS, AND OFFICE OF THE COMPTROLLER, FINANCE AND ACCOUNTING RIGHT TO KNOW ADVISORY COUNCIL

#### Notice of Public Hearing Worker and Community Right to Know Act

Take notice that pursuant to the "Worker and Community Right to Know Act", N.J.S.A. 34:5A-1 et seq., the Department of Health, Department of Environmental Protection and Department of Labor, in conjunction with the Governor's Right to Know Advisory Council, will hold a public hearing to receive information, advice, testimony and recommendations from the public concerning the implementation of the Act, as follows:

Wednesday, March 15, 1989  
10:00 A.M. to 5:00 P.M.  
New Jersey Department of Personnel Training Center  
Room 79—North Wing  
Arbor—600  
600 College Road East  
Princeton, New Jersey 08540

The purpose of the hearing will be to receive public comments about the implementation of the Right to Know Act by the State, the effect of the Community Right to Know provision of the Superfund amendments, the problems employers and employees are having concerning compliance with the Right to Know law, and positive actions that have occurred as a result of the requirements of the law.

The Departments of Health and Environmental Protection would like to hear suggestions regarding substances which should be added or deleted to the Right to Know Hazardous Substance List. Any suggested revisions should be based on and accompanied by documented scientific evidence.

Persons who wish to testify should call Dr. Karen Miles at (609) 984-2202. The record will be kept open for 15 days beyond March 15, 1989 for the receipt of written comments, which should be sent to: Richard Willinger, Program Manager, Right to Know Program, New Jersey Department of Health, CN 368, Trenton, New Jersey 08625.

(a)

**Petition for Rulemaking  
Long Term Care Licensing Standards  
Withholding/Withdrawal of Life-Sustaining  
Treatment**

Petitioner: Hector M. Rodriguez, Ombudsman for the Institutionalized Elderly of the State of New Jersey.  
Authority: N.J.S.A. 26:2H-5 and N.J.A.C. 8:39-27.3(c).

Take notice that on December 5, 1988, Hector M. Rodriguez, Ombudsman for the Institutionalized Elderly, filed a rulemaking petition with the Commissioner of Health requesting the adoption of administrative rules elucidating the responsibilities of licensed long term care facilities in New Jersey with respect to the withholding or withdrawal of life-sustaining medical treatment or diagnosis. These rules were requested in order to provide needed clarification of the way in which the holdings of the New Jersey Supreme Court on the topic should be implemented in nursing homes.

A rule generally addressing the issue has been incorporated in the most recent Manual of Standards for Long Term Care Facilities which was adopted in June 1988 (see N.J.A.C. 8:39-27.3(c)). The Ombudsman for the Institutionalized Elderly believes that this rule is incomplete and that more detailed regulatory standards are necessary to provide guidance to the nursing homes, the patients, families of patients and the public.

The petition is under careful consideration by the Department. In accordance with N.J.A.C. 1:30-3.6, the results of this consideration shall be provided to the petitioner and submitted to the Office of Administrative Law for publication in the New Jersey Register.

**HUMAN SERVICES**

(b)

**OFFICE OF THE COMMISSIONER**

**Social Services Block Grant  
Pre-Expenditure Report  
N.J.A.C. 10:5**

The Office of Administrative Law and the Department of Human Services have evaluated the rules at N.J.A.C. 10:5, which expired December 19, 1988, pursuant to Executive Order No. 66(1978). It has been determined that these rules need not be re promulgated because they are simply informative and not regulatory in nature. Since the material in the rules is informative, the subject matter can be disseminated as a Public Notice in the New Jersey Register.

The delivery of social services under the federal Social Services Block Grant program is administered by the Department of Human Services. Services are provided directly by Divisions within the Department and by private and public provider agencies under contract with a Division and by interdepartmental agreements with other State agencies.

New Jersey has developed a Pre-Expenditure Report, pursuant to the requirements of Title XX of the Social Security Act, as amended by the Omnibus Reconciliation Act of 1981. The Act established minimum federal planning requirements and maximum State flexibility to develop a social service program that best meets the State's needs. The report outlines the major service areas and the individuals to be served. The Social Security Act requires that the report be made public and opportunity for comment to the Department of Human Services be made available to the public.

Copies of the Pre-Expenditure Report may be obtained from:

Department of Human Services  
Office of Policy, Planning and Advocacy  
CN 700  
Trenton, N.J. 08625

Comments may be submitted to the same address.

**LAW AND PUBLIC SAFETY**

(c)

**DIVISION OF MOTOR VEHICLE SERVICES  
Notice of Contract Carrier Applicant**

Take notice that Glenn R. Paulsen, Director, Division of Motor Vehicle Services, 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 Contract Carrier Permit.

CONTRACT CARRIER (NON-GRANDFATHER)  
Omni Bulk Systems, Inc.  
117 Grand Avenue  
Hackettstown, NJ 07840

Protests in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicle Services, 25 South Montgomery Street, Trenton, New Jersey 08666 within 20 days (February 26, 1989) following the publication date of an application.

**TREASURY-GENERAL**

(d)

**DIVISION OF BUILDING AND CONSTRUCTION  
Architect-Engineer Selection  
Notice of Assignments—Month of December 1988**

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, pre-qualified New Jersey consulting firms. For information on DBC's pre-qualification and assignment procedures, call (609) 984-6979.

Last list dated December 1, 1988.

The following assignments have been made:

DBC #	PROJECT	A/E	CCE
M905-02	Site Electrical Interface Electrical System Upgrade Hagedorn Center for Geriatrics Glen Gardener, N.J.	Frank B. Holtaway & Son, Inc.	\$1,434 Services
M532-01	Remedial Repairs to HVAC Systems Buildings 11, G, H, I & J Marlboro Psychiatric Hospital Marlboro, N.J.	M. Benton & Assoc.	\$130,000
1047	New Field House Jersey City State College Jersey City, N.J.	Thomas E. Torricelli	\$225,000
P586	Potable Water Supply Improvements High Point State Park Sussex County, N.J.	Purcell Associates	\$200,000
A563	Design Concept—Glass Replacement Justice Complex Trenton, N.J.	Gilbert L. Seltzer Assoc.	\$5,500 Services
A539	Concrete Testing Renovations Central Motor Pool Trenton, N.J.	Certified Testing Labs, Inc.	\$300 Services
1026	Sidewalk Repairs/Replacement Fine Arts Building Kean College Union, N.J.	John Zanetakos Assoc., Inc.	\$75,000
1050	Air Conditioning Theater for the Performing Arts Kean College Union, N.J.	Jeffrey & Kallaur, Inc.	\$310,000
1053	Experimental Theater Renovations Stockton State College Pomona, N.J.	Kitchen & Assoc., PA	\$265,000

**PUBLIC NOTICES**

**TREASURY-GENERAL**

J054	Upgrade Domestic/Fire Water Systems Stockton State College Pomona, N.J.	Stone & Webster Eng. Corp.	\$320,000
J055	Primary Elec. Distribution Upgrade Stockton State College Pomona, N.J.	James C. Anderson & Assoc., Inc.	\$340,000
J051	Facility Consultant—FY '89 Division of Building & Construction	Eugene F. Freda Co., Inc.	\$50,000 Services
J053	Facility Consultant—FY '89 Division of Building & Construction	Rolf Jensen & Assoc., Inc.	\$50,000 Services
J054	Facility Consultant—FY '89 Division of Building & Construction	Ebasco Services, Inc.	\$50,000 Services
J055	Facility Consultant—FY '89 Division of Building & Construction	Tighe Firtion Carrino & Assoc.	\$50,000 Services

**(a)**

**NEW JERSEY STATE LOTTERY COMMISSION**

**Rules of the Lottery Commission**

**Notice of Correction: N.J.A.C. 17:20-5.3, 17:20-6.1, 17:20-8.1**

Take notice that errors appear in the New Jersey Administrative Code at N.J.A.C. 17:20-5.3(b)2, 17:20-6.1(d), 17:20-8.1(b)2, and 17:20-8.1(e) concerning the rules of the Lottery Commission. The rules should appear in the New Jersey Administrative Code as follows:

17:20-5.3 Hearings

- (a) (No change in text.)
- (b) The request for a hearing shall:
  - 1. (No change in text.)
  - 2. Specify the ruling, action or matter on which the hearing is requested and indicate what relief is desired.
- (c)-(g) (No change in text.)

17:20-6.1 Distribution of lottery tickets; conduct of business

- (a)-(c) (No change in text.)
- (d) The agent accepts all tickets in trust for the Lottery. Tickets in the hands of an agent are the agent's sole responsibility and it is the agent's sole duty as a fiduciary of the Lottery either to return the tickets to the Lottery within the specified time or to remit the face value of the tickets to the Lottery, minus any commissions, bonuses and reimbursements for redeemed tickets to which the agent is entitled.

17:20-8.1 Lottery Vendors' code of ethics

- (a) (No change in text.)
- (b) The maintenance of a business relationship shall be deemed to include but not be limited to any interest, financial or otherwise, direct or indirect, any business transaction or business activity involving a Commissioner, officer or employee. However, it shall not be a violation of this section for a Lottery Commissioner, officer, or employee to seek future outside employment or to correspond with a Lottery Vendor with respect thereto, provided that:
  - 1. (No change in text.)
  - 2. They are not violative of State law or such other ethical standards as may apply. (Lottery Commissioners and Division Officers and employees are covered by separate Codes of Ethics. See (h) below.)

1. (No change in text.)

2. They are not violative of State law or such other ethical standards as may apply. (Lottery Commissioners and Division Officers and employees are covered by separate Codes of Ethics. See (h) below.)

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

(e) No Lottery Vendor shall offer any Lottery Commissioner, officer or employee any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service, or other thing of value was given or offered for the purpose of influencing the recipient in the discharge of his official duties.

(f)-(i) (No change in text.)

# EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by Title and Chapter. If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the Title Table of Contents for each executive department or agency and on the Subtitle page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

## OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	5/4/92
1:5	10/20/91
1:6	5/4/92
1:6A	5/4/92
1:7	5/4/92
1:10	5/4/92
1:10A	5/4/92
1:10B	10/6/91
1:11	5/4/92
1:13	5/4/92
1:20	5/4/92
1:21	5/4/92
1:30	2/14/91
1:31	6/17/92

N.J.A.C.	Expiration Date
3:23	7/6/92
3:24	8/20/89
3:25	8/17/92
3:26	12/31/90
3:27	9/16/90
3:28	12/17/89
3:30	10/17/88
3:32	10/1/93
3:38	10/5/92
3:41	10/16/90
3:42	4/4/93

## AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	1/17/94
2:3	6/18/89
2:5	6/18/89
2:6	9/3/90
2:9	7/7/91
2:16	5/7/90
2:22	7/6/92
2:23	7/18/93
2:24	2/11/90
2:32	6/1/92
2:48	11/27/90
2:50	5/1/92
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	11/7/93
2:69	11/7/93
2:70	5/7/90
2:71	7/8/93
2:72	7/8/93
2:73	7/8/93
2:74	7/8/93
2:76	8/29/89
2:90	6/24/90

## PERSONNEL (CIVIL SERVICE)—TITLE 4/4A

N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/5/91
4:6	5/5/91
4A:1	10/5/92
4A:2	10/5/92
4A:3	9/6/93
4A:4	6/6/93
4A:5	10/5/92
4A:6	1/4/93
4A:7	10/5/92
4A:9	10/5/92
4A:10	11/2/92

## COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:2	9/1/93
5:3	9/1/93
5:4	10/5/92
5:10	11/17/93
5:11	3/1/89
5:12	1/1/90
5:13	12/24/92
5:14	12/1/90
5:17	6/1/89
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:19	2/1/93
5:22	12/1/90
5:23	3/1/93
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	6/18/91
5:30	6/29/93
5:31	12/1/89
5:37	11/18/90
5:38	10/27/93
5:70	7/9/92
5:71	3/1/90
5:80	5/20/90
5:91	6/16/91

## BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91
3:7	9/16/90
3:11	3/19/89
3:13	11/17/91
3:17	6/18/91
3:18	1/19/93
3:19	3/17/91
3:21	2/2/92
3:22	5/21/89

N.J.A.C.	Expiration Date
5:92	6/16/91
5:100	5/7/89

N.J.A.C.	Expiration Date
7:22	1/5/92
7:23	6/18/89
7:24	5/19/91
7:25	2/18/91
7:25A	5/6/90
7:26	11/4/90
7:26B	12/21/92
7:27	Exempt
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:37	Exempt
7:38	9/18/90
7:45	2/6/94

**DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A**

N.J.A.C.	Expiration Date
5A:2	5/20/90

**EDUCATION—TITLE 6**

N.J.A.C.	Expiration Date
6:2	2/6/94
6:3	7/8/93
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	8/9/90
6:22	9/3/90
6:22A	12/19/93
6:24	4/2/91
6:26	1/24/90
6:27	1/24/90
6:28	6/1/89
6:29	3/25/90
6:30	7/5/93
6:31	1/24/90
6:39	10/18/89
6:43	4/7/91
6:46	10/5/92
6:53	7/7/92
6:64	1/11/93
6:68	4/12/90
6:69	6/4/91
6:70	1/25/90
6:78	11/7/93
6:79	11/25/92

**HEALTH—TITLE 8**

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	5/21/89
8:9	2/18/91
8:13	9/8/92
8:19	6/28/90
8:20	3/4/90
8:21	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/17/89
8:24	5/2/93
8:25	5/19/93
8:26	8/4/91
8:31	11/5/89
8:31A	3/18/90
8:31B	10/15/90
8:33	10/7/90
8:33A	4/15/90
8:33B	10/7/90
8:33C	8/20/89
8:33D	2/1/87
8:33E	6/23/92
8:33F	1/14/90
8:33G	7/20/89
8:33H	7/19/90
8:33I	9/15/91
8:33J	5/7/89
8:33K	4/16/89
8:34	11/15/93
8:39	6/20/93
8:40	4/15/90
8:41	2/17/92
8:42	8/17/92
8:42A	6/12/91
8:42B	7/18/93
8:43	1/21/91
8:43A	9/3/90
8:43B	1/21/91
8:43E	12/11/92
8:43F	3/18/90
8:43G	9/8/91
8:43I	3/21/93
8:44	11/2/93
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90
8:52	12/15/91
8:53	8/4/91
8:57	6/18/90
8:59	10/1/89
8:60	5/3/90
8:61	10/6/91
8:65	12/2/90
8:70	8/19/93
8:71	4/2/89

**ENVIRONMENTAL PROTECTION—TITLE 7**

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/17/90
7:1D	11/28/93
7:1E	7/15/90
7:1F	4/20/92
7:1G	10/1/89
7:1H	7/24/90
7:1I	7/18/93
7:2	6/24/93
7:3	3/21/93
7:6	12/19/88
7:7	5/7/89
7:7A	6/6/93
7:7E	7/24/90
7:7F	1/19/93
7:8	2/5/93
7:9	1/21/91
7:10	9/4/89
7:11	5/13/93
7:12	4/11/93
7:13	5/4/89
7:14	4/27/89
7:14A	6/4/89
7:14B	12/21/92
7:15	4/2/89
7:17	4/7/91
7:18	8/6/91
7:19	4/15/90
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90
7:20A	12/16/93

**HIGHER EDUCATION—TITLE 9**

N.J.A.C.	Expiration Date
9:1	1/17/89
9:2	6/17/90
9:3	9/27/93
9:4	10/30/91
9:5	1/21/91
9:6	5/20/90
9:6A	1/4/93
9:7	2/28/93
9:8	11/4/90
9:9	10/3/93
9:11	1/17/89
9:12	1/17/89
9:14	5/20/90
9:15	10/25/88

**HUMAN SERVICES—TITLE 10**

N.J.A.C.	Expiration Date
10:1	11/7/93
10:2	1/5/92
10:3	11/21/93
10:4	1/3/88
10:5	12/19/88
10:6	2/21/89
10:12	1/5/92
10:13	7/18/93
10:14	5/16/93
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:40	3/15/89
10:42	8/18/91
10:43	9/1/88
10:44	10/3/88
10:44A	11/21/93
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	11/5/89
10:66	12/15/93
10:67	3/3/91
10:68	7/7/91
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/93
10:70	6/16/91
10:71	1/6/91
10:72	8/27/92
10:80	8/23/89
10:81	10/15/89
10:82	10/29/89
10:85	1/30/90
10:87	3/1/89
10:89	9/11/90
10:90	10/14/92
10:94	1/6/91
10:95	8/23/89
10:97	4/16/89

**N.J.A.C.**

N.J.A.C.	Expiration Date
10:99	2/19/90
10:100	2/6/89
10:109	3/17/91
10:112	2/17/89
10:120	9/26/88
10:121	3/13/89
10:121A	12/7/92
10:122	8/6/89
10:122A	Exempt
10:122B	9/10/89
10:123	7/20/90
10:124	12/7/92
10:125	7/16/89
10:126	11/7/93
10:127	8/26/93
10:129	10/11/89
10:130	9/19/88
10:131	12/7/92
10:132	1/5/92
10:141	2/21/89

**CORRECTIONS—TITLE 10A**

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:22	7/5/93
10A:31	2/4/90
10A:32	3/4/90
10A:33	7/16/89
10A:34	4/6/92
10A:70	Exempt
10A:71	4/15/90

**INSURANCE—TITLE 11**

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	6/24/90
11:1-22	6/24/90
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	10/28/93
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92
11:14	7/2/89
11:15	12/3/89
11:16	2/3/91
11:17	4/18/93

**LABOR—TITLE 12**

N.J.A.C.	Expiration Date
12:3	12/19/93
12:5	9/19/93
12:6	10/17/93
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:18	3/7/93
12:20	11/5/89
12:35	8/5/90
12:41	1/17/94

N.J.A.C.	Expiration Date
12:45	5/2/93
12:46	5/2/93
12:47	5/2/93
12:48	5/2/93
12:49	5/2/93
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:60	3/21/93
12:90	12/17/89
12:100	11/5/89
12:105	1/21/91
12:110	1/19/93
12:112	9/6/93
12:120	5/3/90
12:175	11/28/93
12:190	1/4/93
12:195	6/24/93
12:200	8/5/90
12:210	9/6/93
12:235	5/5/91

N.J.A.C.	Expiration Date
13:41	9/3/90
13:42	10/31/93
13:43	9/1/93
13:44	8/20/89
13:44B	11/2/92
13:44C	7/18/93
13:45A	12/16/90
13:46	6/3/90
13:47	2/2/92
13:47A	10/5/92
13:47B	1/4/89
13:47C	8/20/89
13:48	1/21/91
13:49	12/16/93
13:51	4/27/92
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:60	1/20/92
13:70	2/25/90
13:71	2/25/90
13:75	8/20/89
13:76	6/27/93
13:77	2/1/93

**COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A**

**PUBLIC UTILITIES—TITLE 14**

N.J.A.C.	Expiration Date
12A:9	3/7/93
12A:10-1	8/15/89
12A:11	9/21/92
12A:12	9/21/92
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	2/6/94
12A:81	2/6/94
12A:82	2/6/94
12A:100-1	9/8/91
12A:120	9/6/93
12A:121	12/5/93

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:10	9/8/91
14:11	1/27/92
14:17	5/7/89
14:18	7/29/90

**LAW AND PUBLIC SAFETY—TITLE 13**

**ENERGY—TITLE 14A**

N.J.A.C.	Expiration Date
13:1	7/5/93
13:1C	Expired 12/1/83
13:2	8/5/90
13:3	4/25/93
13:4	1/21/91
13:10	5/27/89
13:13	6/17/90
13:18	4/1/90
13:19	8/23/89
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	6/4/89
13:24	11/5/89
13:25	3/18/90
13:26	9/26/93
13:27	4/1/90
13:28	5/16/93
13:29	6/3/90
13:30	4/15/90
13:31	12/12/91
13:32	10/23/92
13:33	3/18/90
13:34	10/26/93
13:35	11/19/89
13:36	11/19/89
13:37	2/11/90
13:38	10/7/90
13:39	1/6/91
13:39A	7/7/91
13:40	9/3/90

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:11	9/20/89
14A:12	2/7/88
14A:13	2/2/92
14A:14	2/6/89
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

**STATE—TITLE 15**

N.J.A.C.	Expiration Date
15:2	5/2/93
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

**TRANSPORTATION—TITLE 16**

N.J.A.C.	Expiration Date
16:1	8/5/90
16:2	10/3/88
16:6	9/3/90
16:13	5/7/89
16:16	11/7/88
16:17	11/7/88
16:20A	12/17/89

<b>N.J.A.C.</b>	<b>Expiration Date</b>
16:20B	12/17/89
16:21	9/3/90
16:21A	8/20/89
16:22	2/3/91
16:25	8/15/93
16:25A	7/18/93
16:26	8/6/89
16:27	9/8/91
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	4/15/90
16:33	9/3/90
16:41	7/28/92
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	5/25/93
16:49	3/18/90
16:51	4/6/92
16:53	3/19/89
16:53A	4/15/90
16:53C	6/16/93
16:53D	5/7/89
16:54	4/7/91
16:55	6/14/93
16:56	6/4/89
16:60	6/14/93
16:61	6/14/93
16:62	4/15/90
16:72	3/31/91
16:73	1/30/92
16:75	5/13/93
16:76	2/6/94
16:77	1/21/90
16:78	10/7/90
16:79	10/20/91
16:80	11/7/93
16:81	11/7/93

**TREASURY-GENERAL—TITLE 17**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
17:1	5/6/93
17:2	12/17/89
17:3	8/15/93
17:4	7/1/90
17:5	12/2/90
17:6	11/22/93
17:7	12/19/93
17:8	6/27/90
17:9	10/3/93
17:10	5/6/93
17:12	8/15/89
17:16	12/2/90
17:19	3/18/90
17:20	9/26/93
17:25	6/18/89
17:27	10/7/93
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92
17:32	3/21/93

**TREASURY-TAXATION—TITLE 18**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
18:2	9/6/93
18:3	4/23/89
18:5	4/16/89
18:6	4/2/89
18:7	4/2/89
18:8	4/2/89
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	4/2/89
18:19	4/6/89
18:22	4/2/89
18:23	4/2/89
18:23A	8/5/90
18:24	6/7/93
18:25	1/6/91
18:26	6/7/93
18:30	4/2/89
18:35	6/7/93
18:36	2/4/90
18:37	8/5/90
18:38	2/16/93
18:39	9/8/92

**OTHER AGENCIES—TITLE 19**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
19:3	5/26/93
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93
19:8	7/5/93
19:9	10/17/93
19:12	8/7/91
19:16	8/7/91
19:17	6/8/93
19:25	1/9/91
19:30	10/7/90
19:40	9/26/89
19:41	5/12/93
19:42	5/12/93
19:43	4/27/89
19:44	9/29/93
19:45	3/24/93
19:46	4/28/93
19:47	4/28/93
19:48	10/13/93
19:49	3/24/93
19:50	5/12/93
19:51	8/14/91
19:52	9/25/91
19:53	4/28/93
19:54	3/24/93
19:61	7/7/91
19:65	7/7/91
19:75	1/13/94

# 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 December 5, 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.1989 d.1 means the first rule adopted in 1989.

**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.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT NOVEMBER 21, 1988**

**NEXT UPDATE: SUPPLEMENT DECEMBER 19, 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
20 N.J.R. 321 and 434	February 16, 1988	20 N.J.R. 1977 and 2122	August 15, 1988
20 N.J.R. 435 and 570	March 7, 1988	20 N.J.R. 2123 and 2350	September 6, 1988
20 N.J.R. 571 and 692	March 21, 1988	20 N.J.R. 2351 and 2416	September 19, 1988
20 N.J.R. 693 and 842	April 4, 1988	20 N.J.R. 2417 and 2498	October 3, 1988
20 N.J.R. 843 and 950	April 18, 1988	20 N.J.R. 2499 and 2610	October 17, 1988
20 N.J.R. 951 and 1018	May 2, 1988	20 N.J.R. 2611 and 2842	November 7, 1988
20 N.J.R. 1019 and 1126	May 16, 1988	20 N.J.R. 2843 and 2948	November 21, 1988
20 N.J.R. 1127 and 1316	June 6, 1988	20 N.J.R. 2949 and 3046	December 5, 1988
20 N.J.R. 1317 and 1500	June 20, 1988	20 N.J.R. 3047 and 3182	December 19, 1988
20 N.J.R. 1501 and 1594	July 5, 1988	21 N.J.R. 1 and 88	January 3, 1989
20 N.J.R. 1595 and 1758	July 18, 1988	21 N.J.R. 89 and 224	January 17, 1989
20 N.J.R. 1759 and 1976	August 1, 1988	21 N.J.R. 225 and 364	February 6, 1989

**N.J.A.C. CITATION**

**ADMINISTRATIVE LAW—TITLE 1**

1:1-5.5	Non-lawyer representatives: consent orders and stipulations
1:1-10.4	Discovery: requests for admissions
1:1-14.3	Interpreters for hearing impaired
1:10-12.2	Emergency fair hearings concerning AFDC and General Assistance: transmittal of notices and initial decisions
1:13A	Lemon Law hearings
1:30-3.1	Regulatory flexibility analysis and proposed rulemaking

**PROPOSAL NOTICE (N.J.R. CITATION)**

**DOCUMENT NUMBER**

**ADOPTION NOTICE (N.J.R. CITATION)**

20 N.J.R. 2845(a)		
20 N.J.R. 2845(b)		
20 N.J.R. 2845(c)		
20 N.J.R. 3049(a)		
21 N.J.R. 91(a)		
20 N.J.R. 573(a)	R.1989 d.20	21 N.J.R. 152(a)

**Most recent update to Title 1: TRANSMITTAL 1988-5 (supplement November 21, 1988)**

**AGRICULTURE—TITLE 2**

2:2	Animal disease control program
2:5-2.1, 2.3, 2.5, 2.6, 2.8	Equine infectious anemia
2:24-2, 3	Registration and transportation of bees
2:32-2.2, 2.3, 2.10, 2.11, 2.13, 2.20, 2.22, 2.27, 2.28	Sire Stakes conditions
2:33	Agricultural fairs
2:52-1.6	Reporting by small milk dealers
2:76-6.2, 6.5, 6.6, 6.9, 6.15, 6.16	Farmland development easements: residual dwelling sites
2:76-8	Acquisition of farmland in fee simple

20 N.J.R. 2419(a)	R.1989 d.30	21 N.J.R. 154(a)
21 N.J.R. 92(a)		
20 N.J.R. 2951(a)		
20 N.J.R. 2952(a)		
20 N.J.R. 2954(a)		
20 N.J.R. 2955(a)		
20 N.J.R. 1761(a)	R.1989 d.49	21 N.J.R. 158(a)
20 N.J.R. 2501(a)	R.1989 d.48	21 N.J.R. 160(a)

**Most recent update to Title 2: TRANSMITTAL 1988-8 (supplement November 21, 1988)**

**BANKING—TITLE 3**

3:1-16	Mortgage loan practices
3:24-5.1	Licensed check cashing
3:38-5	Repeal (see 3:1-16)

20 N.J.R. 1021(b)
20 N.J.R. 2353(a)
20 N.J.R. 1021(b)

**Most recent update to Title 3: TRANSMITTAL 1988-7 (supplement November 21, 1988)**

**CIVIL SERVICE—TITLE 4**

4:1-16.1-16.6, 24.2	Repeal (see 4A:8)
4:2-16.1, 16.2	Repeal (see 4A:8)
4:3-16.1, 16.2	Repeal (see 4A:8)

20 N.J.R. 2955(b)
20 N.J.R. 2955(b)
20 N.J.R. 2955(b)

**Most recent update to Title 4: TRANSMITTAL 1988-3 (supplement September 19, 1988)**

**PERSONNEL—TITLE 4A**

4A:6-1.3, 1.10	Sick leave; leave without pay
4A:8	Layoffs
4A:8	Layoffs: change of public hearing dates

20 N.J.R. 133(a)	R.1989 d.29	21 N.J.R. 19(a)
20 N.J.R. 2955(b)		
20 N.J.R. 3171(a)		

**Most recent update to Title 4A: TRANSMITTAL 1988-3 (supplement September 19, 1988)**

**COMMUNITY AFFAIRS—TITLE 5**

5:10	Maintenance of hotels and multiple dwellings
5:10-1.3, 1.6, 1.10, 1.12, 1.17, 25	Fire safety in hotels and multiple dwellings
5:13-1.14	Limited dividend and nonprofit housing projects: payment in lieu of taxes

20 N.J.R. 2126(a)	R.1988 d.572	20 N.J.R. 3122(a)
20 N.J.R. 2126(a)	R.1988 d.572	20 N.J.R. 3122(a)
20 N.J.R. 2425(a)	R.1988 d.571	20 N.J.R. 3123(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:14-1.2	Neighborhood Preservation Balanced Housing Program: eligibility	21 N.J.R. 3(a)		
5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)		
5:23-3.15	Uniform Construction Code: plumbing subcode	20 N.J.R. 2846(a)	R.1989 d.66	21 N.J.R. 288(a)
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)		
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)		
5:27-1.3, 1.6, 5	Fire safety in rooming and boarding houses	20 N.J.R. 2126(a)	R.1988 d.572	20 N.J.R. 3122(a)
5:27-3.3	Rooming and boarding houses: emergency eviction of a resident	21 N.J.R. 93(a)		
5:38	State intergovernmental review process for Federal programs and direct development activities	20 N.J.R. 2354(a)	R.1988 d.553	20 N.J.R. 3015(a)
5:70-6.3	Congregate Housing Services Program: service subsidy formula	20 N.J.R. 2426(a)	R.1988 d.576	20 N.J.R. 3123(b)
5:80-3.3	Housing and Mortgage Finance Agency: return on housing sponsors' equity	21 N.J.R. 94(a)		
5:91-4.1	Council on Affordable Housing: adoption of housing element	20 N.J.R. 2613(b)	R.1989 d.41	21 N.J.R. 160(b)
5:91-5.2, 6.2, 7.1, 7.3	Council on Affordable Housing: mediation process	20 N.J.R. 3050(a)		
5:91-14	Council on Affordable Housing: amending of certified municipal plan	20 N.J.R. 2613(c)	R.1989 d.42	21 N.J.R. 161(a)
5:92-6.1, 11.4, 11.5, 12.9, 16.6, App. F	Affordable housing council rules	20 N.J.R. 1673(b)	R.1988 d.566	20 N.J.R. 3123(c)
5:92-12.4	Initial pricing: correction to text	_____	_____	20 N.J.R. 3127(a)
5:92-12.4	Council on Affordable Housing: initial pricing of units	20 N.J.R. 3051(a)		

Most recent update to Title 5: TRANSMITTAL 1988-11 (supplement November 21, 1988)

#### MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)

#### EDUCATION—TITLE 6

6:2	Appeals to State Board	20 N.J.R. 2615(a)	R.1989 d.67	21 N.J.R. 288(b)
6:3-1.10, 1.12, 1.14, 1.18, 1.21, 1.22, 3.1	School districts: corrections to text	_____	_____	21 N.J.R. 19(b)
6:3-5	Reporting of allegations of child abuse	21 N.J.R. 3(b)		
6:8-1.1, 4.3, 7.1	High school core proficiencies	20 N.J.R. 2619(a)		
6:11-3	Bilingual/ESL certification; basic communication skills certification	21 N.J.R. 95(a)		
6:11-12.5	Substance awareness coordinator	20 N.J.R. 1980(c)	R.1988 d.562	20 N.J.R. 3015(b)
6:20-2	Bookkeeping and accounting in local districts	20 N.J.R. 2502(a)	R.1989 d.86	21 N.J.R. 292(a)
6:20-5.7	Reimbursement to nonpublic schools for asbestos removal and encapsulation	20 N.J.R. 2505(a)		
6:22A-1	School facility lease purchase agreements	20 N.J.R. 2127(a)	R.1988 d.590	20 N.J.R. 3127(b)
6:29-4.2	Testing for tuberculosis infection	20 N.J.R. 1981(a)	R.1988 d.563	20 N.J.R. 3016(a)
6:39	High school core proficiencies	20 N.J.R. 2619(a)		

Most recent update to Title 6: TRANSMITTAL 1988-9 (supplement November 21, 1988)

#### ENVIRONMENTAL PROTECTION—TITLE 7

7:1-1.2	Petition for rulemaking procedure	21 N.J.R. 102(a)		
7:1A-1.1, 1.2, 1.4, 1.6, 2.1-2.4, 2.8, 2.10, 2.12-2.15, 5.1, 5.2, 7	Replacement of contaminated wellfields	20 N.J.R. 2470(a)	R.1988 d.574	20 N.J.R. 3129(a)
7:1C-1.2, 1.5	90-day construction permits: fee structure for treatment works approvals	20 N.J.R. 135(a)	Expired	
7:1D	Allocation of costs for emergency water supply projects	20 N.J.R. 2197(a)	R.1988 d.589	20 N.J.R. 3135(a)
7:2	State Park Service: extension of comment period	20 N.J.R. 1035(a)		
7:7-2.2	Coastal wetlands maps for Gloucester County	19 N.J.R. 2090(b)	R.1988 d.570	20 N.J.R. 3135(b)
7:7-2.2	Coastal wetlands boundaries in Salem County	20 N.J.R. 349(b)		
7:7-2.3	Waterfront development	20 N.J.R. 2815(a)	R.1989 d.8	21 N.J.R. 34(a)
7:7-2.3	Waterfront development	21 N.J.R. 4(a)		
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)		
7:7E-3.46	Hudson River waterfront development	20 N.J.R. 1982(a)		
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)		
7:9-4	Surface water quality standards: public hearings	20 N.J.R. 1865(a)		
7:9-4	Surface water quality standards: extension of comment period	20 N.J.R. 2427(a)		
7:9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A-G	Surface water quality standards	20 N.J.R. 1597(a)		
7:9A	Individual subsurface sewage disposal systems	20 N.J.R. 1790(a)		
7:9A	Individual subsurface sewage disposal systems: extension of comment period	20 N.J.R. 2427(b)		
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	20 N.J.R. 142(a)	R.1989 d.28	21 N.J.R. 43(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:10-13.2, 13.10, 13.13	Industrial wastewater treatment systems: licensing of operators	20 N.J.R. 1141(b)		
7:10-16	Maximum Containment Levels (MCLs) for hazardous contaminants in drinking water	19 N.J.R. 2228(a)	R.1989 d.12	21 N.J.R. 46(a)
7:11-2.1-2.5, 2.8-2.14	Sale of water from Delaware and Raritan Canal, Spruce Run/Round Valley system	21 N.J.R. 103(a)		
7:13-7.1(d)	Redelineation of Bound Brook within South Plainfield and Edison	20 N.J.R. 3051(b)		
7:14A-3.1	NJPDES permit requirements: discharges of dredged and fill material into freshwater wetlands and open waters	20 N.J.R. 1328(a)	R.1988 d.588	20 N.J.R. 3135(c)
7:14A-5.12	Closure of hazardous waste facilities	20 N.J.R. 2650(a)		
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)		
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		
7:20A	Water usage certifications for agricultural and horticultural purposes	20 N.J.R. 2663(a)	R.1989 d.36	21 N.J.R. 176(a)
7:22-10	Environmental assessment requirements for State-assisted wastewater treatment facilities	20 N.J.R. 1983(a)	R.1989 d.53	21 N.J.R. 179(a)
7:25-1.5, 8	Clam licenses	20 N.J.R. 2666(a)	R.1989 d.26	21 N.J.R. 55(a)
7:25-22.1-22.4	Harvesting Atlantic menhaden	21 N.J.R. 107(a)		
7:26-1.1, 1.4, 2.7, 2.11, 2.12, 2.13, 2A.8, 2B.4, 2B.8, 3.1-3.5, 3.7, 4.1-4.5, 4.7-4.10, 16.2, 16.3, 16.13	Solid waste facility and transporter registration fees	20 N.J.R. 2668(a)		
7:26-1.1, 1.4, 4, 4A, 7.3, 7.5, 12.2, 13A.6, 16.2, 16.3	Hazardous waste fee schedule	20 N.J.R. 1995(a)	R.1989 d.54	21 N.J.R. 190(a)
7:26-1.1, 1.4, 4, 4A	Hazardous waste fee schedule: extension of comment period	20 N.J.R. 2427(c)		
7:26-1.4, 1.7, 1.11, 1.12, 2.1, 2.4, 2.8, 2.13	Permit exemptions for composting facilities	20 N.J.R. 2817(a)	R.1989 d.55	21 N.J.R. 198(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, 9.8, 9.9, 9.10, 9.11, 9.13, App. A, 12.3, 12.5	Closure of hazardous waste facilities	20 N.J.R. 2650(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Essex County	20 N.J.R. 1048(a)		
7:26-7.3, 7.4, 7.5, 7.6	Hazardous waste management	20 N.J.R. 867(a)		
7:26-7.4, 9.1, 12.1	Hazardous waste stored for reuse	20 N.J.R. 1329(a)		
7:26-9.4	General facility standards: correction to text			21 N.J.R. 56(a)
7:26-12.4	Hazardous waste management: permit standards	21 N.J.R. 108(a)		
7:26-12.9	Hazardous waste management: research, development and demonstration permits	20 N.J.R. 462(a)	R.1989 d.11	21 N.J.R. 56(b)
7:26B-1.10	Environmental Cleanup Responsibility Act: fee schedule	20 N.J.R. 2000(a)	R.1989 d.27	21 N.J.R. 57(a)
7:27-16.1, 16.2, 16.5, 16.6	Volatile organic substance emissions and ozone concentrations	20 N.J.R. 3052(a)		
7:27-16.1, 16.3	Marine transfer of gasoline: vapor recovery program	20 N.J.R. 1866(a)	R.1989 d.62	21 N.J.R. 321(a)
7:27-23	Volatile organic substances in consumer products	20 N.J.R. 2002(a)		
7:27-25	Control and prohibition of air pollution by vehicular fuels	20 N.J.R. 1631(a)		
7:27-25	Control and prohibition of air pollution by vehicular fuels: extension of comment period	20 N.J.R. 2355(a)		
7:45	Delaware and Raritan Canal: State Park review zone	20 N.J.R. 23(a)	R.1989 d.61	21 N.J.R. 324(a)

**Most recent update to Title 7: TRANSMITTAL 1988-11 (supplement November 21, 1988)**

**HEALTH—TITLE 8**

8:31B-2.2, 2.4	Hospital reimbursement: DRG classification of newborns	20 N.J.R. 3057(a)		
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	Hospital reimbursement: 1989 rate setting	21 N.J.R. 135(a)		
8:31B-3.19	Hospital reimbursement: burn care unit reporting	20 N.J.R. 2541(a)	R.1989 d.77	21 N.J.R. 295(a)
8:31B-3.19, 3.38, 3.45	Hospital reimbursement: newborn DRGs; outlier categories	20 N.J.R. 3057(b)		
8:31B-3.43	General acute care hospitals: implementation of proposed schedule of rates	20 N.J.R. 2542(a)	R.1989 d.79	21 N.J.R. 296(a)
8:31B-3.44	Hospital reimbursement: DRG outliers	20 N.J.R. 2542(b)	R.1989 d.80	21 N.J.R. 296(b)
8:31B-3.51-3.55, 3.58, 3.59	Hospital reimbursement: appeals	21 N.J.R. 131(a)		
8:31B-3, App. II	Hospital reimbursement: laundry and linen cost center	20 N.J.R. 2543(a)	R.1989 d.78	21 N.J.R. 297(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:31B-4.37	Uncompensated Care Trust Fund: charity care eligibility and charges	20 N.J.R. 2219(a)	R.1989 d.25	21 N.J.R. 58(a)
8:31B-4.41	Hospital reimbursement: uncompensated care audit functions	20 N.J.R. 2959(a)		
8:31B-5.1, 5.2, 5.3	Hospital reimbursement: Diagnosis Related Groups	21 N.J.R. 138(a)		
8:31C	Residential alcoholism treatment: facility rate setting	20 N.J.R. 2960(a)		
8:33E-1.2, 1.11	Cardiac diagnostic facilities: pediatric patients; new facilities	20 N.J.R. 2847(a)		
8:33E-2.3, 2.4	Cardiac surgery centers: pediatric patients; surgery teams	20 N.J.R. 2848(a)		
8:33J-1.3	Nuclear Magnetic Resonance (NMR)/Magnetic Resonance Imaging (MRI) demonstration period	20 N.J.R. 2220(a)	R.1988 d.573	20 N.J.R. 3136(a)
8:33K	Residential alcoholism treatment facilities: bed standards	21 N.J.R. 150(a)		
8:34	Licensing of nursing home administrators	20 N.J.R. 2355(b)	R.1988 d.567	20 N.J.R. 3136(b)
8:38-1.1, 1.4	HMOs and vision care services	21 N.J.R. 6(a)		
8:39-41.3, 42.2	Long-term care facilities: excessive heat emergency plan	20 N.J.R. 2543(b)		
8:42A	Licensure of alcoholism treatment facilities	20 N.J.R. 3059(a)		
8:43-4.11	Residential health care facilities: hot water temperature	20 N.J.R. 2221(a)	R.1988 d.578	20 N.J.R. 3136(c)
8:43B-1.10	Hospital facilities: confidentiality of patient information	20 N.J.R. 2221(b)	R.1989 d.87	21 N.J.R. 297(b)
8:43B-18	Hospital anesthesiology standards	20 N.J.R. 2544(a)		
8:44	Operation of clinical laboratories	20 N.J.R. 2222(a)	R.1988 d.561	20 N.J.R. 3017(a)
8:60-2.1 (12:120-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
8:60-2.1 (12:120-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		
8:65-10.2, 10.4, 10.5	Scheduling of controlled dangerous substances	_____	_____	21 N.J.R. 70(b), 70(c), 70(d)
8:66-1	Bureau of Alcohol Countermeasures (recodified from 13:20-31)	_____	_____	21 N.J.R. 70(a)
8:70-1.5	Interchangeable drug products: substitution of unlisted generics	20 N.J.R. 2623(a)		
8:71	Interchangeable drug products (see 20 N.J.R. 1710(b), 2376(d), 2768(b))	20 N.J.R. 871(a)	R.1989 d.3	21 N.J.R. 63(a)
8:71	Interchangeable drug products (see 20 N.J.R. 2769(a))	20 N.J.R. 1766(a)	R.1989 d.5	21 N.J.R. 63(b)
8:71	Interchangeable drug products	20 N.J.R. 2356(a)	R.1989 d.4	21 N.J.R. 63(c)
8:71	Interchangeable drug products	20 N.J.R. 3078(a)		
8:71	List of Interchangeable Drug Products	21 N.J.R. 7(a)		

**Most recent update to Title 8: TRANSMITTAL 1988-10 (supplement November 21, 1988)**

**HIGHER EDUCATION—TITLE 9**

9:1	Licensing and degree approval standards	20 N.J.R. 2965(a)		
9:6A-4.3	Managerial employees at State colleges: annual salary increases	20 N.J.R. 3079(a)		
9:7-3.2	1989-80 Tuition Aid Grant Award Table	21 N.J.R. 109(a)		
9:7-4.4	Garden State Scholarships supplemental awards eligibility	21 N.J.R. 110(a)		
9:7-6.4	Garden State Graduate Fellowships: approved programs	20 N.J.R. 2624(a)		
9:7-8.1	Vietnam Veterans Tuition Aid: eligibility	20 N.J.R. 2625(a)		
9:11	Educational Opportunity Fund Program	20 N.J.R. 2506(a)		
9:11-1.1	Educational Opportunity Fund grants: student eligibility	20 N.J.R. 1768(b)		
9:11-1.6, 1.8, 1.9, 1.20	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)		
9:11-1.7	EOF grants: award amounts	20 N.J.R. 1770(a)		
9:12	Educational Opportunity Fund Program	20 N.J.R. 2506(a)		
9:12-2.6, 2.9	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)		

**Most recent update to Title 9: TRANSMITTAL 1988-7 (supplement November 21, 1988)**

**HUMAN SERVICES—TITLE 10**

10:3-1.14	Contract administration: prohibited vendor activity	20 N.J.R. 2849(a)		
10:31	Mental illness screening and screening outreach programs	20 N.J.R. 2427(d)		
10:37-5.6, 5.16	Repeal (see 10:31)	20 N.J.R. 2427(d)		
10:39	Group homes for mentally ill: operating standards	20 N.J.R. 2547(a)		
10:41-2	Services to developmentally disabled: confidentiality of client records	20 N.J.R. 2435(a)		
10:41-4	Human rights committees for developmentally disabled persons	20 N.J.R. 2552(a)		
10:43	Guardians for developmentally disabled persons: determination of need	20 N.J.R. 2850(a)		
10:46	Services for developmentally disabled: determination of eligibility	20 N.J.R. 2008(a)		
10:48-2	Control of viral hepatitis B among developmentally disabled	20 N.J.R. 2437(a)		
10:48-3	Lead toxicity control among developmentally disabled	20 N.J.R. 2555(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:48-3	Lead Toxicity Control Program: comment period	20 N.J.R. 2688(a)		
10:54-4	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:54-4.5	Medicaid reimbursement for physician's services	20 N.J.R. 2558(a)		
10:56-3.7, 3.10	Medicaid reimbursement for dental services	20 N.J.R. 2558(a)		
10:58-1.2, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:61-3.2	Medicaid reimbursement for independent laboratory services	20 N.J.R. 2558(a)		
10:62-1, 2, 3	Vision Care Manual	20 N.J.R. 956(c)	R.1988 d.580	20 N.J.R. 3147(a)
10:63-1.11, 1.19	Use of personal needs allowance in long-term care facilities	20 N.J.R. 1144(a)	R.1988 d.556	20 N.J.R. 3017(b)
10:63-3.9-3.12	Reimbursement of long-term care facilities: fixed property and movable equipment	20 N.J.R. 2560(a)		
10:63-3.10	Reimbursement of long-term care facilities under CARE Guidelines: correction	20 N.J.R. 2968(a)		
10:66	Independent Clinic Services Manual	20 N.J.R. 2562(a)	R.1989 d.33	21 N.J.R. 162(a)
10:66-1.6, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:66-3.2	Medicaid reimbursement for independent clinic services	20 N.J.R. 2558(a)		
10:69B	Lifeline Credit/Tenants Lifeline Assistance programs	20 N.J.R. 2440(a)	R.1988 d.575	20 N.J.R. 3153(a)
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only: eligibility computation amounts	Emergency (expires 2-27-89)	R.1989 d.57	21 N.J.R. 207(a)
10:81-4.5	AFDC program: voluntary restricted payments	21 N.J.R. 7(b)		
10:82-5.10	Emergency Assistance in AFDC: temporary shelter allowances	20 N.J.R. 1147(a)		
10:83-1	Special Payments Handbook for SSI recipients	20 N.J.R. 2563(a)		
10:85-3.2	General Assistance: residency in therapeutic care facility	20 N.J.R. 2968(b)		
10:85-3.3	General Assistance: income-in-kind	20 N.J.R. 2238(a)	R.1989 d.7	21 N.J.R. 20(a)
10:85-3.3	Medically Needy eligibility	20 N.J.R. 2688(b)		
10:87	Food Stamp Program	20 N.J.R. 2689(a)		
10:87-12.1-12.4, 12.7	Food Stamp Program: income deductions, coupon allotment, maximum allowable income	20 N.J.R. 2592(a)	R.1989 d.1	21 N.J.R. 21(a)
10:100-App. A	Supplemental Security Income (SSI) payment levels	Emergency (expires 2-28-89)	R.1989 d.58	21 N.J.R. 208(a)
10:100-3, App. A	Special Payments Handbook for SSI recipients (Recodified to 10:83-1)	20 N.J.R. 2563(a)		
10:120	Youth and Family Services hearings	20 N.J.R. 2742(a)		
10:122	Requirements for child care centers	20 N.J.R. 3079(b)		
10:124-1.2, 1.3, 5.2	Shelters accepting juveniles: corrections to text	_____	_____	21 N.J.R. 162(b)
10:124-1.2, 4.11, 5.2, 6.5	Shelters accepting juveniles: corrections to text	_____	_____	20 N.J.R. 3169(d)
10:127-4.10, 4.19, 5.1, 5.3	Residential child care facilities: corrections to text	_____	_____	20 N.J.R. 3170(a)
10:141	Charity Racing Days for Developmentally Disabled: distribution of proceeds	21 N.J.R. 8(a)		

**Most recent update to Title 10: TRANSMITTAL 1988-11 (supplement November 21, 1988)**

**CORRECTIONS—TITLE 10A**

10A:1-11.3, 11.8	Personal property of inmates	20 N.J.R. 2746(a)	R.1989 d.45	21 N.J.R. 163(a)
10A:3-5.2	Institutional search plan	20 N.J.R. 2441(a)	R.1988 d.582	20 N.J.R. 3155(a)
10A:3-5.10	Collection of urine samples from inmates	21 N.J.R. 10(a)		
10A:4-6.1, 6.3, 6.4	Chronic violator units	21 N.J.R. 10(b)		
10A:4-11.9, 12	Inmate appeals to Office of Administrative Law: public hearing	20 N.J.R. 880(b)		
10A:5-5.2	Involuntary placement to protective custody: hearing procedure	20 N.J.R. 2746(b)	R.1989 d.46	21 N.J.R. 163(a)
10A:6-3.2	Notification of inmate's change of name	21 N.J.R. 11(a)		
10A:9-4.6	Open charges and reduced custody status	20 N.J.R. 880(a)		
10A:16-2.9	Infirmary care	20 N.J.R. 2969(a)		
10A:16-6.6	Infants born to female inmates	20 N.J.R. 2747(a)	R.1989 d.68	21 N.J.R. 299(a)
10A:16-11	Special Medical Units	21 N.J.R. 111(a)		
10A:18-2.6, 2.19, 2.20, 2.22	Inmate correspondence	20 N.J.R. 2854(a)		
10A:32-6.5	Temporary restriction of juveniles	20 N.J.R. 2442(a)	R.1989 d.32	21 N.J.R. 163(c)
10A:34-2.8	Municipal cell equipment	20 N.J.R. 2442(b)	R.1988 d.583	20 N.J.R. 3155(b)
10A:71-2.1, 3.4, 3.28	Parole Board rules	20 N.J.R. 2129(a)		
10A:71-3.21, 6.4	State Parole Board: juvenile inmates; conditions of parole	20 N.J.R. 2747(b)		

**Most recent update to Title 10A: TRANSMITTAL 1988-9 (supplement November 21, 1988)**

**INSURANCE—TITLE 11**

11:1-5.1	FAIR plan surcharge: repeal rule	20 N.J.R. 2507(a)		
11:1-10	Foreign and alien property and casualty insurers: admission requirements	20 N.J.R. 2130(a)		
11:2-1, 19	Repeal (see 11:17-3, 5.7)	20 N.J.R. 1152(a)		
11:2-3	Credit life and credit accident and health insurance: preproposal	20 N.J.R. 2969(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:3-13.5, 14.1, 14.3, 14.5, 14.6, 14.7, 15.1-15.8	Private passenger automobile coverage: standards for written notice to buyers	20 N.J.R. 2984(a)		
11:3-16	Private passenger automobile rate filings for voluntary market	20 N.J.R. 2135(a)		
11:3-24	Automobile coverage: policy constants	20 N.J.R. 3104(a)		
11:4-16.6, 16.8, 23.6, 23.8, Appendices	Medicare Supplement insurance coverage, benefits and premiums	20 N.J.R. 2510(a)	R.1988 d.587	20 N.J.R. 3155(c)
11:4-29	Homeowners price comparison survey	20 N.J.R. 2181(a)	R.1989 d.50	21 N.J.R. 164(a)
11:4-30	Hospital preadmission certification programs (HPCPs)	20 N.J.R. 880(c)		
11:4-31	Term life insurance comparison survey	20 N.J.R. 2990(a)		
11:5	Real Estate Commission rules	20 N.J.R. 2184(a)	R.1988 d.555	20 N.J.R. 3019(a)
11:5-1.16	Real estate listing agreements	20 N.J.R. 2185(a)		
11:5-1.18	Supervision of real estate offices	20 N.J.R. 1160(a)		
11:5-1.23	Real estate offers and broker's obligations	20 N.J.R. 2186(a)		
11:5-1.34	Discriminatory commission—split policies	20 N.J.R. 1163(a)		
11:17-3, 5.7	Insurance producer licensing: professional qualifications	20 N.J.R. 1152(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge	20 N.J.R. 2010(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: correction	20 N.J.R. 2186(b)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: public hearing	20 N.J.R. 2478(d)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: extension of open hearing record	20 N.J.R. 2855(a)		

**Most recent update to Title 11: TRANSMITTAL 1988-7 (supplement October 17, 1988)**

**LABOR—TITLE 12**

12:3-1	Debarment from contracting; conflicts of interest	20 N.J.R. 2519(a)	R.1988 d.584	20 N.J.R. 3137(a)
12:16-21	Employer reporting of workplace and residential zip codes of employees	20 N.J.R. 2625(a)	R.1989 d.39	21 N.J.R. 167(a)
12:17-1.6	Unemployment insurance benefits: temporary separation from work	20 N.J.R. 1333(a)		
12:17-2.4, 2.5	Requalification for unemployment insurance benefits	20 N.J.R. 1522(a)		
12:41-1	Job Training Partnership Act: grievance procedures	20 N.J.R. 2626(a)	R.1989 d.38	21 N.J.R. 168(a)
12:45-1	Vocational rehabilitation services	20 N.J.R. 3107(a)		
12:46-12:49	Repeal (see 12:45-1)	20 N.J.R. 3107(a)		
12:60-8	Public works and EDA projects: debarment from contracting	20 N.J.R. 2520(a)	R.1989 d.23	21 N.J.R. 21(b)
12:100-4.2	Public employee safety and health: access to exposure and medical records	20 N.J.R. 2995(a)	R.1989 d.82	21 N.J.R. 299(b)
12:100-4.2, 5.2, 6.2, 7	Public employee safety and health: toxic and hazardous substances	20 N.J.R. 2013(a)		
12:100-9.18	Public employee safety and health: work in confined spaces	20 N.J.R. 2855(b)	R.1989 d.83	21 N.J.R. 299(c)
12:120-2.1 (8:60-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
12:120-2.1 (8:60-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		
12:175	Ski lift safety	20 N.J.R. 2521(a)	R.1988 d.585	20 N.J.R. 3138(a)
12:235-3.11-3.23	Workers' Compensation: conduct of compensation judges	20 N.J.R. 2442(c)	R.1989 d.24	21 N.J.R. 23(a)
12:235-13	Uninsured Employers' Fund and Second Injury Fund: surcharge collection	20 N.J.R. 2522(a)	R.1988 d.586	20 N.J.R. 3139(a)

**Most recent update to Title 12: TRANSMITTAL 1988-9 (supplement November 21, 1988)**

**COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A**

12A:12-2.10	Local Development Financing Fund program: information confidentiality	20 N.J.R. 2524(a)	R.1989 d.6	21 N.J.R. 26(a)
12A:12-3.9	Tourism matching grants: purchases by grantee	21 N.J.R. 114(a)		
12A:80-1	Urban Small Business Incubator Program	20 N.J.R. 2524(b)	R.1989 d.91	21 N.J.R. 299(d)
12A:81-1	Urban Development Program	20 N.J.R. 2527(a)	R.1989 d.92	21 N.J.R. 302(a)
12A:82-1	Neighborhood Development Corporation	20 N.J.R. 2530(a)	R.1989 d.90	21 N.J.R. 304(a)
12A:121	Urban enterprise zone boundaries	20 N.J.R. 2358(a)	R.1988 d.565	20 N.J.R. 3020(a)

**Most recent update to Title 12A: TRANSMITTAL 1988-6 (supplement November 21, 1988)**

**LAW AND PUBLIC SAFETY—TITLE 13**

13:4-3.4, 3.5, 8.2	Discrimination complaints: confidentiality of parties' identities	20 N.J.R. 499(a)		
13:10	Multiple dwelling reports concerning racial composition	21 N.J.R. 11(b)		
13:20-31	Bureau of Alcohol Countermeasures (recodified to 8:66-1)	_____	_____	21 N.J.R. 70(a)
13:21-11.13	Temporary registration of motor vehicles	20 N.J.R. 176(a)	R.1989 d.22	21 N.J.R. 26(b)
13:21-22	Certificates of title for salvage motor vehicles	20 N.J.R. 2675(a)		
13:27-5.8, 8.7, 8.8, 8.15	Certification of landscape architects	20 N.J.R. 2359(a)	R.1989 d.40	21 N.J.R. 171(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:27-8.16, 9.5	Architects and certified landscape architects: change of address; service of process	21 N.J.R. 114(b)		
13:29-6	Practice of accountancy: continuing education	20 N.J.R. 2532(a)		
13:29-6	Continuing professional education for accountants: public hearing and comment period	20 N.J.R. 3114(a)		
13:30-8.5	Board of Dentistry: access to complaint history of licensees	20 N.J.R. 2680(a)	R.1989 d.63	21 N.J.R. 338(a)
13:37-1.1, 1.2	Accreditation of nursing programs	20 N.J.R. 1645(b)	R.1988 d.558	20 N.J.R. 3021(a)
13:38-1, 2.1, 2.3, 2.5, 2.7, 6.1	Practice of optometry: advertising; access to optometrist; patient records	20 N.J.R. 2361(b)		
13:38-2.11	Practice of optometry: delegation of duties to ancillary personnel	20 N.J.R. 2363(a)		
13:38-2.11	Practice of optometry: public hearing on delegation of duties to ancillary personnel	20 N.J.R. 2995(b)		
13:39	Board of Pharmacy rules	20 N.J.R. 1648(a)		
13:39A-3.2	Unlawful practices and arrangements by physical therapists: preproposal	20 N.J.R. 2242(a)		
13:39A-5.1	Educational requirements for licensure as physical therapist	20 N.J.R. 2243(a)		
13:40-10.1	Professional engineers and land surveyors: contract to provide services	20 N.J.R. 2243(b)	R.1989 d.64	21 N.J.R. 339(a)
13:42	Board of Psychological Examiners	20 N.J.R. 2244(a)	R.1988 d.557	20 N.J.R. 3023(a)
13:44-1.1	Qualified graduate of veterinary medicine	20 N.J.R. 2680(b)		
13:44C-10.1	Audiologist and speech-language pathologist licensure: administrative correction	_____	_____	20 N.J.R. 3140(a)
13:44D	Public movers and warehousemen	20 N.J.R. 2364(a)		
13:44D	Public movers and warehousemen: public hearing and extension of comment period	20 N.J.R. 2681(a)		
13:45A-2	Motor vehicle advertising practices	21 N.J.R. 115(a)		
13:45A-11.1	Advertising and sale of new merchandise	20 N.J.R. 2247(a)		
13:45A-26	Automotive dispute resolution: Lemon Law implementation	20 N.J.R. 2681(b)	R.1989 d.65	21 N.J.R. 339(b)
13:45B-4, 5	Temporary help service firms; booking agencies	20 N.J.R. 2684(a)		
13:46-1A.3	Athletic Control Board: weighing of boxers	20 N.J.R. 380(a)		
13:47A-2.10	Investment advisory contracts: performance fee compensation	21 N.J.R. 12(a)		
13:47B	Commercial weighing and measuring devices	20 N.J.R. 2856(a)		
13:49	State Medical Examiner rules	20 N.J.R. 2687(a)	R.1989 d.35	21 N.J.R. 171(b)
13:49	State Medical Examiner: standards and procedures	20 N.J.R. 2856(b)		
13:51-3.6	Chemical breath testing: correction to text	_____	_____	21 N.J.R. 171(c)
13:70-1.30	Thoroughbred racing: horsemen's associations and surplus funds	20 N.J.R. 2995(c)		
13:70-5	Thoroughbred racing: registration of colors	20 N.J.R. 2536(a)	R.1989 d.74	21 N.J.R. 344(a)
13:70-9.29	Thoroughbred racing: apprentice jockey weight allowance	20 N.J.R. 2996(a)		
13:70-9.30	Thoroughbred racing: apprentice jockey contracts	20 N.J.R. 2996(b)		
13:70-11.12	Thoroughbred racing: abusive whipping by jockey	20 N.J.R. 2038(a)	R.1988 d.559	20 N.J.R. 3025(a)
13:70-14.5	Thoroughbred racing: testing for illegal devices	20 N.J.R. 3114(b)		
13:70-19.22	Thoroughbred racing: determining finishing place	20 N.J.R. 2038(b)	R.1988 d.560	20 N.J.R. 3025(b)
13:71-1.25	Harness racing: horsemen's associations and surplus funds	20 N.J.R. 2997(a)		
13:75-1.7	Violent crimes compensation: prosecution of offender	20 N.J.R. 736(b)		
13:78	Advocacy fund for crime victims and witnesses	20 N.J.R. 2997(b)		
13:80-1	Hazard Waste Management Information Awards	20 N.J.R. 507(b)		

**Most recent update to Title 13: TRANSMITTAL 1988-10 (supplement November 21, 1988)**

**PUBLIC UTILITIES—TITLE 14**

14:3-7.5	Interest on customer deposits	20 N.J.R. 737(a)	R.1988 d.568	20 N.J.R. 3140(b)
14:3-7.13	Collection activity on disputed charges; interest on overpayments	20 N.J.R. 963(b)	R.1988 d.569	20 N.J.R. 3141(a)
14:3-7.14	Discontinuance of residential service to tenants	20 N.J.R. 1668(a)		
14:3-9.6	Solid waste: filing contracts for service (preproposal)	20 N.J.R. 1669(a)		
14:3-10.3, 10.5, 10.15	Solid waste: out-of-state solid waste collectors (preproposal)	20 N.J.R. 1669(c)		
14:3-10.15	Annual filing of customer lists by solid waste collectors: annual reports	20 N.J.R. 2629(a)		
14:3-10.20	Solid waste: itemized billing (preproposal)	20 N.J.R. 1670(a)		
14:3-10.21	Solid waste: violations, penalties (preproposal)	20 N.J.R. 1670(b)		
14:3-10.22	Solid waste: contracts (preproposal)	20 N.J.R. 1669(b)		
14:9-4.3	Solid waste: decals for vehicles (preproposal)	20 N.J.R. 1671(a)		
14:9-4.4	Solid waste: container identification (preproposal)	20 N.J.R. 1671(b)		
14:10-6	Telecommunications: Alternative Operator Service (AOS) providers	20 N.J.R. 3115(a)		
14:18-15.1	Preproposal: Statewide cable TV access channel for educational and public affairs programming	20 N.J.R. 1063(a)		

**Most recent update to Title 14: TRANSMITTAL 1988-1 (supplement January 19, 1988)**

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>ENERGY—TITLE 14A</b>			
14A:14	Certificate of need for electrical facilities	20 N.J.R. 2188(b)	
14A:14	Certificate of need for electrical facilities: public hearing	20 N.J.R. 2861(a)	

**Most recent update to Title 14A: TRANSMITTAL 1988-3 (supplement November 21, 1988)**

**STATE—TITLE 15**

15:2-2, 3	Preclearance of corporation documents and adoption of corporation name	20 N.J.R. 2998(a)	
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**Most recent update to Title 15: TRANSMITTAL 1988-2 (supplement September 19, 1988)**

**PUBLIC ADVOCATE—TITLE 15A**

**Most recent update to Title 15A: TRANSMITTAL 1987-1 (supplement April 20, 1987)**

**TRANSPORTATION—TITLE 16**

16:5-2.2, 3.1	Property acquisitions: appraisal; payments	21 N.J.R. 13(a)		
16:7-1.3	Auctions of buildings and excess land parcels	21 N.J.R. 13(b)		
16:21-1.2, 3.1	State aid to counties and municipalities	20 N.J.R. 2999(a)	R.1989 d.71	21 N.J.R. 307(a)
16:21A-1.3, 3.1	State aid for bridge rehabilitation	20 N.J.R. 3000(a)	R.1989 d.70	21 N.J.R. 307(b)
16:22-1.3, 3.1	State aid for urban revitalization, special demonstration and emergency projects	20 N.J.R. 3000(b)	R.1989 d.69	21 N.J.R. 307(c)
16:28-1.6, 1.14, 1.44	Speed limit zones along U.S. 40 in Salem County, Route 33 in Monmouth County, and Route 27 in Middlesex County	20 N.J.R. 2630(a)	R.1989 d.19	21 N.J.R. 26(c)
16:28-1.13	Speed limit zone along Route 20 in Paterson	20 N.J.R. 2631(a)	R.1989 d.14	21 N.J.R. 27(a)
16:28-1.17	Speed limit zones along Route 147 in Cape May County	21 N.J.R. 119(a)		
16:28-1.25	Speed limit zones along Route 23 in Sussex County	21 N.J.R. 119(b)		
16:28-1.72	School zone along U.S. 206 in Montaque Township	20 N.J.R. 2862(a)	R.1989 d.51	21 N.J.R. 172(a)
16:28-1.79	Speed limits along Route 94 in Sussex County	20 N.J.R. 3116(a)		
16:28-1.79, 1.81	Speed limit zones along Route 49 in Salem County and Route 94 in Sussex County	20 N.J.R. 2632(a)	R.1989 d.17	21 N.J.R. 28(a)
16:28-1.130	Speed limit zones along Route 66 in Monmouth County	20 N.J.R. 2633(a)	R.1989 d.13	21 N.J.R. 27(b)
16:28A-1.4, 1.11, 1.21, 1.38	Bus stop zones and no stopping or standing along Routes 4, 21, and 71, and U.S. 30	20 N.J.R. 2862(b)	R.1989 d.52	21 N.J.R. 172(b)
16:28A-1.7, 1.22, 1.32, 1.34	Parking restrictions along U.S. 9 in Tuckerton, Route 31 in Hopewell, U.S. 46 in Mountain Lakes, and Route 49 in Pennsville	20 N.J.R. 2633(b)	R.1989 d.18	21 N.J.R. 28(b)
16:28A-1.20	Parking restrictions along Route 29 in Lambertville	20 N.J.R. 3001(a)	R.1989 d.76	21 N.J.R. 308(a)
16:28A-1.21, 1.51, 1.53, 1.68	Parking restrictions along U.S. 30 and Route 168 in Camden County, Route 179 in Lambertville, and Route 93 in Leonia	20 N.J.R. 3001(b)	R.1989 d.75	21 N.J.R. 308(b)
16:28A-1.33	No stopping or standing zone along Route 47 in Franklin Township	20 N.J.R. 2634(a)	R.1989 d.15	21 N.J.R. 29(a)
16:28A-1.53	Parking along Route 179 in Lambertville	20 N.J.R. 3117(a)		
16:28A-1.105	Bus stop zones along Route 54 in Atlantic County	21 N.J.R. 120(a)		
16:30-3.6	Exclusive bus and HOV lanes along Routes 3 and 495 into Manhattan	20 N.J.R. 737(b)		
16:30-9	Use restrictions on bridges along highway system	20 N.J.R. 3117(b)		
16:30-10.9	Midblock crosswalk along U.S. 9 in Galloway Township	20 N.J.R. 2635(a)	R.1989 d.16	21 N.J.R. 29(b)
16:31-1.11	Turn restrictions along Route 21 in Newark	20 N.J.R. 3120(a)		
16:32-3.5, 3.6, App. A	102-inch truck standard network; Route 47 access	20 N.J.R. 2536(b)	R.1989 d.9	21 N.J.R. 29(c)
16:44-1.2	Classification of prospective bidders for department projects	20 N.J.R. 3004(a)	R.1989 d.88	21 N.J.R. 309(a)
16:49-1.3, 1.5, 1.6, 2.1, App.	Transportation of hazardous materials: intrastate shipments of combustible liquids	20 N.J.R. 3005(a)		
16:51-1.3, 1.4, 1.6, 3.1, 4.3-4.7	Practice and procedure before Office of Regulatory Affairs concerning autobus operations, companies, and services	20 N.J.R. 2635(b)		
16:53D	Regular route autobus carriers: zone of rate freedom	20 N.J.R. 2374(b)	R.1989 d.56	21 N.J.R. 310(a)
16:54-1.4	Licensing of aeronautical facilities	20 N.J.R. 2638(a)	R.1989 d.31	21 N.J.R. 173(a)
16:62-1.1, 1.2, 3.2, 3.5, 5.1, 9.1, 10.1	Land use within airport hazard areas	20 N.J.R. 3007(a)		
16:62-5.1, 9.1	Land uses within airport hazard areas: preproposal	20 N.J.R. 1534(a)		
16:76	NJ TRANSIT: private carrier capital improvement	20 N.J.R. 2638(b)	R.1989 d.73	21 N.J.R. 310(b)
16:77-1.1, 1.4, 1.5	NJ TRANSIT: fees charged to municipalities	21 N.J.R. 13(c)		

**Most recent update to Title 16: TRANSMITTAL 1988-11 (supplement November 21, 1988)**

**TREASURY-GENERAL—TITLE 17**

17:1-1.18	Public retirement systems: disbursement checks	20 N.J.R. 2639(a)	R.1989 d.37	21 N.J.R. 173(b)
17:6	Consolidated Police and Firemen's Pension Fund	20 N.J.R. 2537(a)	R.1988 d.579	20 N.J.R. 3142(a)
17:7	Prison Officers' Pension Fund	20 N.J.R. 2375(a)	R.1988 d.577	20 N.J.R. 3142(b)
17:8-3.3	Supplemental Annuity Collective Trust: lump sum distributions	20 N.J.R. 2192(a)	R.1988 d.554	20 N.J.R. 3026(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
17:9-1.8	State Health Benefits Program: enrollment policy	20 N.J.R. 2863(a)		
17:19-10.4, 10.5, 10.7, 10.9	Architect/engineer selection procedures	20 N.J.R. 180(a)	Expired	
17:20-5.3, 6.1, 8.1	Lottery Commission rules: corrections to text			21 N.J.R. 247(a)
17:25	Collection of delinquent educational loans from local government employees	20 N.J.R. 2537(b)	R.1989 d.2	21 N.J.R. 30(a)
17:33	Catastrophic Illness in Children Relief Fund: surcharge collection	21 N.J.R. 121(a)		

Most recent update to Title 17: TRANSMITTAL 1988-10 (supplement November 21, 1988)

**TREASURY-TAXATION—TITLE 18**

18:3	Alcoholic Beverage Tax	21 N.J.R. 122(a)		
18:5	Cigarette Tax	21 N.J.R. 123(a)		
18:6	Unfair Cigarette Sales Act rules	21 N.J.R. 124(a)		
18:6-7.13	Wholesaling of prepackaged cigarettes	20 N.J.R. 2192(b)	R.1989 d.84	21 N.J.R. 311(a)
18:7	Corporation Business Tax	21 N.J.R. 14(a)		
18:8	Financial Business Tax	21 N.J.R. 16(a)		
18:12-7.1, 7.12	Homestead tax rebate: extension of filing time	21 N.J.R. 16(b)		
18:12-10	Real property defined	20 N.J.R. 1787(a)	R.1988 d.581	20 N.J.R. 3142(c)
18:15-2.15	Farmland assessment of woodland: filing of applications	21 N.J.R. 125(a)		
18:18	Motor Fuels Tax	21 N.J.R. 125(b)		
18:19	Motor fuels retail sales	21 N.J.R. 126(a)		
18:22	Public utility taxes	21 N.J.R. 17(a)		
18:23	Railroad Property Tax	21 N.J.R. 18(a)		
18:26-2.5, 2.7, 5.9, 5.17, 5.19, 6.1, 6.2, 6.3, 7.10, 8.1, 8.6, 8.7, 8.12, 9.4, 9.10, 12.2, App. A	Transfer inheritance tax rules	20 N.J.R. 2193(a)	R.1989 d.85	21 N.J.R. 311(b)
18:35-1.24	Gross income tax: investment fund distributions	20 N.J.R. 742(b)		

Most recent update to Title 18: TRANSMITTAL 1988-4 (supplement September 19, 1988)

**TITLE 19—OTHER AGENCIES**

19:4-5.3A, 6.28	Hackensack Meadowlands: Planned Development Center specially planned areas (PDC-1)	20 N.J.R. 2247(b)	R.1989 d.21	21 N.J.R. 31(a)
19:8-1.1, 3.1	Tolls on Garden State Parkway	21 N.J.R. 127(a)		
19:8-10.1	Garden State Parkway: pre-employment screening	20 N.J.R. 2864(a)	R.1989 d.44	21 N.J.R. 173(c)
19:9-1.2	Speed limitation on constructor vehicles	20 N.J.R. 2864(b)	R.1989 d.60	21 N.J.R. 314(a)
19:25-1.7, 4.6, 6.1, 8.1, 9.8, 10.6, 10.8, 11.6, 11.8, 12.4, 15.14, 16.11	Reporting and record keeping	20 N.J.R. 2640(a)		
19:25-1.7, 4.7, 8.3, 9.6, 10.4, 11.9, 12.2	Campaign reporting	20 N.J.R. 3009(a)		
19:25-15.4, 15.5, 15.14, 15.16, 15.17, 15.20, 15.26, 15.46	Public financing of general election for governor	20 N.J.R. 2642(a)	R.1989 d.43	21 N.J.R. 173(d)
19:25-16.19	Public financing of gubernatorial primary	Emergency (expires 2-28-89)	R.1989 d.59	21 N.J.R. 209(a)
19:30-5.2	Vendor activities representing conflict of interest	21 N.J.R. 129(a)		
19:75	Atlantic County Transportation Authority: rules of operation	20 N.J.R. 1680(b)	R.1989 d.81	21 N.J.R. 314(c)

Most recent update to Title 19: TRANSMITTAL 1988-5 (supplement October 17, 1988)

**TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY**

19:40-1.2	Junket activities and representatives	20 N.J.R. 2644(a)		
19:40-2	Access to information maintained by casino licensees	20 N.J.R. 1068(a)		
19:40-2	Access to information maintained by casino licensees: public hearing	20 N.J.R. 2049(b)		
19:41-7.2B	Reporting of proposed foreign gaming operations	21 N.J.R. 129(b)		
19:41-8.6	Withdrawal of application for licensure	21 N.J.R. 130(a)		
19:41-9.4, 9.6, 9.7, 9.11, 9.11A, 9.12, 9.18, 9.20	Billing rates for Commission and Gaming Enforcement services; special assessment	20 N.J.R. 2539(a)	R.1988 d.591	20 N.J.R. 3146(a)
19:41-9.16	Deletion of endorsement from employee license	20 N.J.R. 2647(a)	R.1989 d.47	21 N.J.R. 175(a)
19:45-1.1, 1.15, 1.24, 1.24A, 1.24B	Wire transfers of funds	20 N.J.R. 3012(a)		
19:45-1.9	Junket activities and representatives	20 N.J.R. 2644(a)		
19:45-1.11A, 1.12	Jobs compendium information; assistant casino manager position	20 N.J.R. 3120(b)		
19:45-1.20	Marking baccarat vigorish	20 N.J.R. 2647(b)		
19:45-1.25	Verification of cash equivalents	20 N.J.R. 1789(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:45-1.40, 1.41	Jackpot payout and hopper fill forms	20 N.J.R. 2050(b)	R.1989 d.34	21 N.J.R. 175(b)
19:45-1.40B	Inspection of slot machine jackpots	20 N.J.R. 2648(a)	R.1989 d.72	21 N.J.R. 314(b)
19:46-1.7, 1.9	Roulette wheels	20 N.J.R. 2445(a)		
19:47-2.15	Blackjack irregularities	20 N.J.R. 3014(a)		
19:47-3.3	Marking baccarat vigorish	20 N.J.R. 2647(b)		
19:47-5.6	Big Six: spin of wheel and wagers	21 N.J.R. 131(a)		
19:49-1.1, 1.2, 1.3, 2.1, 2.4, 3.1, 3.2, 3.5, 3.6	Junket activities and representatives	20 N.J.R. 2644(a)		
19:49-3.1, 3.2, 3.3	Junket reporting requirements	20 N.J.R. 2648(b)		
19:52-1.3	Musical entertainment	20 N.J.R. 2649(a)		
19:53-1.16	Repeal procedural rule concerning affirmative action	21 N.J.R. 18(b)		
19:53-2	Set-aside goals for minority and women's business enterprises	20 N.J.R. 2446(a)		

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