NEW JERSEY REGISTER

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS*, PAGE 364.

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(Includes rules filed through January 13, 1986)

The New Jersey Register supplements the New Jersey Administrative Code. To complete your research of the latest State Agency rule changes, see the Register Index of Rule Proposals and Adoptions in this issue.

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RULE PROPOSALS

Interested persons may submit, in writing, information or arguments concerning any of the following proposals until **March 5, 1986.** 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. 1:30-3.5. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice.

AGRICULTURE

(a)

DIVISION OF MARKETS

New Jersey Sire Stakes Program Rules

Proposed Amendments: N.J.A.C. 2:32-2

Authorized By: Sire Stakes Board of Trustees, and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Authority: N.J.S.A. 5:5-91.
Proposal Number: PRN 1985-736.

Submit comments by March 5, 1986 to:
John J. Repko, Director
Division of Markets
N.J. Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone (609) 292-5536

The agency proposal follows:

Summary

The New Jersey Sire Stakes Program is a 14 year old program which has given the State of New Jersey prominence in Standardbred horse breeding. The proposed amendments for the 1986 racing season contain modifications of the language of the current rules to make them easier to understand and to more accurately reflect the actual conditions encountered by the participants in the program.

Substantive changes in the 1986 rules include: (1) An increase in some starting fees to make the starting fees consistent for all tracks; (2) Lowering the starting fees for 4-year-olds, as the 4-year-old program was cut back on the pari-mutuel level; (3) Reducing the qualifying times on both the pari-mutuel and fair programs to upgrade the quality of competition; (4) Adding a filly division for the Lou Babic 2-year-old pace.

Social Impact

The Sire Stakes Board of Trustees sees little if any new or additional social impact on the owners, trainers and drivers of New Jersey Sire Stakes eligible horses as a result of the proposed amendments, since many of the changes reflect current policy which is being followed. However, with the rewriting of the rules in clearer and more precise language, it is hoped that a positive impact will occur by removing any doubts as to the meaning of the rules.

Economic Impact

The Sire Stakes Board sees little, if any, economic impact on the overall program. However, specific impacts may occur in the following areas. The increase in some of the starting fees will impact the owners, but the money will be added to the purse for that race and the impact will be slight. The decrease in the starting fees for the 4-year-olds on the pari-mutuel level will have a positive effect on participation although the total number of races for the 4-year-olds has been reduced. The lowering of qualifying times should have little or not economic effect, as this reflects the current potential

NEW JERSEY REGISTER

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of horses participating in the program. The addition of a filly division to the Babic 2-year-old pace should have a positive economic impact and should increase the value of 2-year-old fillies who are eligible to the race, though this impact is difficult to quantify as it depends on many other factors out of the control of the Sire Stakes Board.

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

[2:32-2.3 Certificate of Good Health]
[A registered New Jersey stallion, whose owner wishes to breed him to mares for the purpose of dropping foals eligible for the New Jersey Sire Stakes Program, must have a currently valid Certificate of Good Health from the New Jersey Department of Agriculture's Division of Animal Health. A copy of this certificate will be filed with the Standardbred Breeders and Owners Association of New Jersey and the New Jersey Department of Agriculture. The physical examination must be conducted by a licensed New Jersey veterinarian. The physical examination must be conducted between October 1 and December 31 of each year.]

[2:32-2.4 Registration; deadlines]
2:32-2.3 Registration of stallions

(a) All standardbred horses, to be eligible to compete in the New Jersey Sire Stakes Program, must be bred in the State of New Jersey and be the product of a registered New Jersey stallion. [The stallion must be registered with the Standardbred Breeders and Owners Association of New Jersey as such and listed in their registry books no later than November 1 of each year. Stallions being registered for the first time are granted an extension until December 1. The stallions must be standing on their respective stud farms by January 1 of the following year.]

(b) The stallion must be registered with the Standardbred Breeders and Owners Association of New Jersey, P.O. Box 839, Freehold, New Jersey 07728.

(c) The registration must be returned by November 1st for stallions that have previously registered and/or stood in New Jersey, and December 1st for any new stallions, with the certification of good health enclosed. The certificate of examination must be completed by a licensed New Jersey veterinarian during the months of October or November which precede the approaching breeding season for which the registration is issued.

(d) The fee for annual registration of a stallion shall be due on or before November 1st of the approaching breeding season and December 1st for new registration. The fee must accompany the registration.

1. The following fees shall be applicable:

i. $500 if stud fee is under $1,000, private treaty or free.

ii. $750 if stud fee is $1,000, but under $10,000.

iii. $1,000 if stud fee is $10,000 or higher.

2. The following late fee may be assessed:

i. Any stallion not registered by November 1st (or December 1st for new registrations) may pay an additional fee (registration fee plus late fee) of $1,500 if registered and standing by January 1st.

(e) Once the registration fee has been paid, there will be no refunds.

(f) The stallion must be on the farm by January 1st.

(g) The registration makes the foals of the stallion eligible to be nominated to the following:

1. Charles I. Smith Trotting Classic;

2. Harold R. Dancer Memorial Trot (foals of participating stallions only);

3. Lou Babic Two-Year-Old Pace;

4. Miss New Jersey Pacing Classic;

5. New Jersey Sired Races;

6. New Jersey Breeders Awards;

7. New Jersey Futurity;

8. New Jersey Pacing Classic;

9. New Jersey Sire Stakes;

10. New Jersey Yearling Show.

(h) Sires of horses eligible for the events listed above must have been registered with the SBOA/NJ at the time of mating.

[2:32-2.5] **2:32-2.4** Adoption of bylaws

The bylaws of the New Jersey Sire Stakes Board of Trustees are hereby adopted as follows:

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

(c) Said Sire Stakes Program shall be administered by a Board of Trustees consisting of five members, four appointed by the Governor, two of whom shall be members of the Standardbred Breeders and Owners Association of New Jersey, two representatives of racing interests generally, and the Secretary of Agriculture ex officio. Of the members first appointed, the Breeders and Owners Association shall be two years, the other appointed [number] **member** of such association shall be one year, the term of office of one appointee representing racing interests generally shall be for two years and the other appointee representing racing interests generally shall be for a term of one year. Thereafter, appointment shall be for terms of two years.

(d)-(h) (No change.)

(i) Sire Stakes Races shall be run at all licensed harness tracks in the State of New Jersey. Said races and purses and awards awarded therefor shall be pursuant to the rules and regulations of the Board of Trustees hereunder [,] **and** the New Jersey Racing Commission[, and the United States Trotting Association].

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

[2:32-2.6 Record of registration]
[The Office of the Standardbred Breeders and Owners Association of New Jersey is hereby authorized to record the yearly registration of stallions eligible to the New Jersey Sire Stakes Program.]

2:32-2.5 Closing of yearling nominations

(a) The date for the closing of nominations of yearlings to the pari-mutuel and fair divisions shall be May 15 or the next business day following May 15 in the event that that date falls on a Saturday, Sunday or a holiday, of each year, with no exceptions.

(b) The yearling registration fee shall be $40.00, if a copy of the United States Trotting Association certificate of registration accompanies the yearling nomination form and an additional $10.00 processing fee shall be due of the copy of the United States Trotting Association is not submitted. The nomination payment covers the nomination fee to both the Fair and Pari-mutuel divisions. Thereafter, each division will have separate sustaining payments with separate due dates. In addition, the yearling nomination payment form will also include the nomination to the Lou Babic Pace at $25.00. If one chooses to nominate to both of these events, the yearling nomination payment will be a total of $65.00 (or $75.00) and be due on or before May 15 of each year. Fillies may be nominated to the Babic Filly Division at the cost of $15.00 in addition to the $40.00 registration fee.

(c) Supplementary nominations may be made to the New Jersey Sire Stakes commencing with foals of 1984. Parties delinquent to the required May 15 yearling nomination fee are given until January 15th of the two-year-old yearling to fulfill the aforementioned conditions of nominations for a fee of $400. An additional $400.00 is needed to supplement to the Lou Babic Pace.

[2:32-2.7 Closing of yearling nominations]

[The date of the closing of nominations of yearlings to the Pari-mutuel and Fair Divisions shall be May 15 of each year, in accordance with the United States Trotting Association regulations, with no exceptions. A copy of the horse's United States Trotting Association's Certificate of Registration must accompany the yearling nomination payment. A $40.00 payment per horse covers the nomination fee to both the Fair and Pari-mutuel Divisions. Thereafter, each division will have separate sustaining payments with separate due dates. In addition, beginning in 1985, for foals of 1984, the yearling nomination payment form will also include the nomination to the Lou Babic Pace at $25.00. If one chooses to nominate to both of these events, the yearling nomination payment will be a total of $65.00 and be due on or before May 15 of each year. Parties submitting proper yearling payments and nominations by May 15, 1985, but failing to meet the provision requiring a copy of the United States Trotting Association Certificate of Registration, may supplement the yearling by December 15, 1985, at an additional fee of $100.00, provided that the yearling has a United States Trotting Association Certificate of Registration dated on or before May 15 of its yearing year. Parties delinquent to the May 15 payment date, or the valid United States Trotting Association Certificate of Registration requirement dated on or before May 15 of its yearling year, are given until January 15 of the two-year-old year to fulfill the aforementioned conditions of nominations for a fee of $400.00.]

2:32-2.6 Stallion standing full season

(a) A stallion, in order for his foals to be eligible for the New Jersey Sire Stakes Program, must stand for breeding purposes the full season, extending from January 1 through December 31, on a farm in New Jersey, and shall not be moved from the farm on which he was registered without the prior permission (excluding medical emergency) of the Sire Stakes Board of Trustees.

(b) A stallion shall not be permitted to race during a registered breeding year, that is, January 1 through December 31.

(c) The foals of a stallion that race or is moved without prior permission of the Sire Stakes Board of Trustees during a registered breeding year will not be eligible to the Sire Stakes.

[2:32-2.8 Eligibility

A stallion, in order for his foals to be eligible for the New Jersey Sire Stakes Program, must stand for breeding purposes the full season, extending from January 1 through December 31, on a farm in New Jersey, and shall not be moved from the farm without the permission of the Sire Stakes Board of Trustees. A stallion shall not be permitted to race during a registered breeding year, that is, January 1 through December 31.]

[2:32-2.9 Continuing eligibility] **2:32-2.7 Eligibility**

In order for Sire Stakes eligible two-year-old to remain eligible as three-year-olds, their owners must have made the yearling nomination and the first two-year-old sustaining payment. In order for eligible three-year-old horses to remain eligible as four-year-olds, their owners must also have made the first three-year-old sustaining payment as well as the nomination and the first two-year-old sustaining payment. **This condition applies to both the Fair and Pari-mutuel Divisions.**

[2:32-2.10 Guaranteed purse

A purse plus added money will be guaranteed for each Sire Stakes Race at each Fair for two-, three-, and four-year-old trotters and pacers.]

[2:32-2.11 Allocation for Sire Stakes purse money

(a) After deduction of the Fair Division portion of the Sire Stakes purse money, as well as special event, administrative costs and finals money is made, the Pari-mutuel Division of the Sire Stakes purse money will be allocated as follows:

1. 40 percent of all remaining monies for 2 year olds;
2. 50 percent of all remaining monies for 3 year olds;
3. 10 percent of all remaining monies for 4 year olds.]

[2:32-2.12 Starting fees

Only the starting fees will be added to the basic purse. Beginning with the 1985 program, the starting fees will be:

Pari-mutuel Division	Fair Division	Meadowlands
2 year olds $400.00	2 year olds $75.00	2 year olds $500.00
3 year olds $400.00	3 year olds $75.00	3 year olds $500.00
4 year olds $200.00	4 year olds $75.00	4 year olds ..... $300.00]

2:32-2.8 Allocation for Sire Stakes purse money

After deduction of the Fair Division portion of the Sire Stakes purse money and special event money is made, the Pari-mutuel Division of the Sire Stakes purse money will be allocated as determined by the Board of Trustees.

2:32-2.9 Starting fees

Only the starting fees will be added to the basic purse. Starting fees for the 1986 season will be:

Pari-mutuel Division	Fair Division
2 year olds . . . $500.00	**2 year olds . . . $75.00**
3 year olds . . . $500.00	**3 year olds . . . $75.00**
4 year olds . . . $200.00	**4 year olds . . . $75.00**

[2:32-2.13] **2:32-2.10** Division of purse monies

(No change in text.)

[2:32-2.14 Minimum races]

2:32-2.11 Number of Sire Stakes Races

(No change in text.)

[2:32-2.15] **2:32-2.12** Fees **to follow horse**

(No change in text.)

[2:32-2.16] **2:32-2.13** Entry fee deadline

[(a) Beginning with yearlings nominated in 1983, all Sire Stakes Race entry fees must be paid at the time of the race or the horse will not be allowed to start.

(b) All New Jersey Sire Stakes horses entered and drawn to post positions are required to pay starting fees. This starting fee is required even though a horse is scratched.

(c) The starting fee must be paid or the horse will not be permitted to race in any Sire Stakes event until the fee is paid and collected. The United State Trotting Association rule will prevail regarding the death of an entered horse.]

(a) All Sire Stakes Race entry fees must be paid at the time of the race or the horse will not be allowed to start.

(b) All New Jersey Sire Stakes horses entered and drawn to post positions are required to pay starting fees at the track. This starting fee is required even though a horse is scratched.

(c) The starting fee must be paid or the horse will not be permitted to race in any Sire Stakes event until the fee is paid and collected.

(d) The starting fee will not be refunded unless the horse dies between the time of declaration to start and the start of the race.

(e) When an owner has outstanding debts owed to the New Jersey Sire Stakes, every horse owned in whole or in part by that owner shall be subject to be declared ineligible by the Board of Trustees or its representatives to be entered or to start in any New Jersey Sire Stakes Race until such time that debt is collected.

[2:32-2.17 Qualifying conditions

(a) All starters in the New Jersey Sire Stakes Pari-mutuel Division must meet the qualifying conditions in this section for the 1985 racing season.

(b) The 1985 New Jersey Sire Stakes Qualifying Times at the Pari-mutuel tracks will be as follows:

	1 Mile Track	5/8 Mile Track	1/2 Mile Track
Two-Year Old Trot	210	211	212
Three-Year Old Trot	205	206	207
Four-Year Old Trot	203	204	205
Two-Year Old Pace	205	206	207
Three-Year Old Pace	203	204	205
Four-Year Old Pace	202	203	204

(c) When qualifying for a mile track, two seconds are allowed off the half mile time, but when qualifying for a half mile track, two seconds are added to the mile track time.

(d) If a horse initially makes qualifying time but then fails to meet qualifying time in a subsequent event, it must then requalify to meet the standards of the raceway at which the race is to be contested.

(e) Official workouts are not acceptable as a substitute for a qualifying racing time.

(f) All other qualifying standards in effect at the track where the race is being conducted must be adhered to.

(g) All starters in the New Jersey Sire Stakes Fair Division must meet the following condition for the 1985 racing season:

1. All starters must have at least on satisfactory racing line within 45 days of declaration. A satisfactory racing line is defined as a qualifying or racing line charted in the following times or better with allowance for track conditions:

	Trotters	Pacers
Two-year-olds	2:15	2:13
Three-year-olds	2:13	2:11
Four-year-olds	2:11	2:09

2. Horses may be placed on the steward's list for subsequent poor performance.]

2:32-2.14 Qualifying standards

(a) All starters in the New Jersey Sire Stakes Pari-mutuel Division must meet the qualifying conditions of this section for the 1986 racing season.

(b) All other qualifying standards in effect at the track where the race is being conducted must be adhered to.

(c) The 1986 New Jersey Sire Stakes qualifying times at the Pari-mutuel tracks will be as follows:

	1 Mile Track	5/8 Mile Track	1/2 Mile Track
Two-Year Old Trot	**2:08**	**2:09**	**2:10**
Three-Year Old Trot	**2:04**	**2:05**	**2:06**
Four-Year Old Trot	**2:02**	**2:03**	**2:04**
Two-Year Old Pace	**2:04**	**2:05**	**2:06**
Three-Year Old Pace	**2:02**	**2:03**	**2:04**
Four-Year Old Pace	**2:01**	**2:02**	**2:03**

NOTE: When racing at the mile track, two seconds are allowed off the half mile, but when racing on a 1/2 mile track, two seconds are subtracted.

(d) If a horse initially makes the qualifying standards but then fails to meet qualifying standards in a subsequent event, it must then requalify to meet the standards of the raceway at which the race is to be contested.

(e) Official workouts are not acceptable as a substitute for a qualifying racing line.

(f) All starters in the New Jersey Sire Stakes Fair Division must meet the following conditions for the 1986 Racing Season:

1. All starters in the New Jersey Sire Stakes Fair Division shall have raced within 30 days of the race in which they have been entered. They shall show a satisfactory racing line in one of their last two starts (three starts for two-year-olds). A satisfactory racing line is defined as a qualifying or racing line charted in the following times or better with allowances for track conditions:

	Trotters	Pacers
Two-year-olds	**2:13**	**2:11**
Three-year-olds	**2:11**	**2:09**
Four-year-olds	**2:09**	**2:07**

2. Horses may be placed on the stewards list for subsequent poor performance.

[2:32-2.18 One mile dash] **2:32-2.15 Splitting races**

(No change in text.)

[2:32-2.19 Registration with U.S. Trotting Association

All foals must be named and registered with the United States Trotting Association at the time of nomination. In the event of a change of name or ownership the New Jersey Sire Stakes Office must be notified immediately.]

2:32-2.16 Registration of foals

All foals must be registered with the United States Trotting Association with a certificate of registration dated on or before the time of nomination. In the event of a change of name or ownership, the New Jersey Sire Stakes office must be notified immediately.

[2:32-2.20] **2:32-2.17** Purse distribution

(No change in text.)

[2:32-2.21 Starters declare in time]

2:32-2.18 Time of declaration

Starters declare in at the same time as in practice for overnight events at the raceway where Sire Stakes Races will be contested. **Entries for the New Jerse Sire Stakes Fair program will closed at 9:00 A.M., three days prior to the race with Sundays excepted.**

[2:32-2.22] **2:32-2.19** Entry [and fee forms] **blanks**

All entry blanks [and fee forms] must specify as to gait to be contested for age, sex, trainer, owner, preference date, and location of eligibility papers, if they are not in the race office at time of declaration. **In the event that incomplete information is provided and cannot be located, the horse may be drawn in, but may be scratched with the starting fee still payable if it is later determined that the horse is not eligible or qualified.** Under no circumstances will late entries be taken.

[2:32-2.23 Fee schedule] **2:32-2.20 Sustaining fees**

In [1985] **1986** the sustaining fee schedule will be as follows:

(No change in remainder of section.)

[2:32-2.24] **2:32-2.21** Transfer of race
(No change in text.)

[2:32-2.25 Heats
(a) In all Fair Sire Stakes, unless they are conducted on a Pari-mutuel track, an event will be split into heats if there are more than eight horses in a field.
(b) At certain tracks, at the discretion of the judges, there may be less than eight starters allowed per division. Five horses will race in the front tier, and two horses will race in the second tier as trailers.]

2:32-2.22 Number of starters
In all Pari-mutuel and Fair Sire Stakes races, the number of starters permitted in the first tier shall be at the discretion of the judges. No more than two trailers will be permitted in the second tier. However, no trailers shall be permitted in the races designated as finals.

[2:32-2.26] **2:32-2.23** Eligibility [at post time] **papers**
(No change in text.)

[2:32-2.27 Maximum number of horses per heat
No more than eight horses will be permitted to race in a heat at a fair meet; no more than 10 horses will be permitted to race in a heat on a half-mile track; and no more than 12 horses will be permitted to race in a heat on a five-eighth's or on a mile track.]

[2:32-2.28 Event split into divisions]
2:32-2.24 Splitting and carrying over divisions
In the event a Sire Stakes event is split into divisions, such Sire Stake event shall be divided and each division shall race for an equal share of the total purse. All Sire Stakes events shall be advertised added, divided. **In the event that Pari-mutuel event splits into more than three divisions, one or more of the divisions in excess of three may be carried over to the following racing day.**

[2:32-2.29 Sustaining payment deadline
The first sustaining payment on a two- or three-year-old must be made on or before February 15 of a year and the second sustaining payment on a two- or three-year-old must be made on or before April 15 of a year in order to remain eligible in that year. In the case of four-year-olds, the first sustaining payment must be made on or before January 15 of a year, and the second sustaining payment on or before March 15 of a year in order to remain eligible in that year. In the Fair Division, the first sustaining payment on a two-, three-, or four-year-old must be made on or before January 15 of a year and the second sustaining payment on a two-or three-year old must be made on or before march 15 of a year in order to remain eligible in that year.]

2:32-2.25 Payment dates
(a) In the Pari-mutuel Division, the first sustaining payment on a two- or three-year-old must be made on or before February 15 of a year and the second sustaining payment on a two- or three-year-old must be made on or before April 15 of a year in order to remain eligible in that year. In the case of four-year-olds, the first sustaining payment must be made on or before January 15 of a year, and the second sustaining payment on or before March 15 of a year in order to remain eligible in that year.

(b) In the Fair Division, the first sustaining payment on a two-, three-, or four-year-old must be made on or before January 15 of a year and the second sustaining payment on a two- or three-year-old must be made on or before March 15 of a year in order to remain eligible in that year. In the event that the 15th day of the aforementioned month falls on a Saturday, Sunday, a holidy, the payment must be postmarked on or before the next business day following the 15th of that month.

[2:32-2.30] **2:32-2.26** Refund request
All requests for refunds on sustaining or nominating payments must be made by [registered] letter to the Board Secretary [prior to] **postmarked on or before** the 15th of the month in which the payment is due. **In the event that the 15th falls on a Saturday, Sunday or holiday, the due date will be the next business day following the 15th.**

[2:32-2.31 Split races; four-year old division]
2:32-2.27 Four-year-old split
If the four-year-old division(s) split [with more than 10 entries] in a Pari-mutuel race [and more than eight entries] **or** in a Fair Division race, the split races will be segregated by sex when possible and applicable.

[2:32-2.32 Final Race eligibility monies]
2:32-2.28 Point standings
Total points accumulated towards Final Race eligibility in the Pari-mutuel Division shall include only Pari-mutuel Division points. Only Fair Division race points count toward the Fair Final eligibility[, which will include the top eight point winners in each division].

[2:32-2.33 Program continuation
The four-year-old New Jersey Sire Stake's Program scheduled to expire in 1977 will be continued in 1978 and thereafter.]

2:32-2.29 Four-year-old division
The four-year-old pari-mutuel New Jersey Sire Stakes program will expire in 1989 with the completion of the four-year-old season of those yearlings registered on May 15, 1985 (foals of 1984).

[2:32-2.34 Notification of change of horse's name, gait or driver]
2:32-2.30 Name change notification
Owners, trainers, drivers, or Stake Services shall notify the New Jersey Sire Stakes Program of a name[,] **or** gait[, or driver] change of a horse by the time of declaration to a race, or the entry will not be accepted for that race.

[2:32-2.35 Establishment of "Final" race]
2:32-2.31 Final races
(a) [There will be a two- and three-year-old "Final" race in each Division with a minimum purse of $50,000 as well as a "Final" race in the four-year-old Divisions with a minimum purse of $25,000 at the Pari-mutuel raceways as scheduled by the New Jersey Sire Stakes Board of Trustees. Effective in 1985 there will be a minimum $10,000 fair "Final" race in each Division] **There will be a two- and three-year-old "Final" race in each Pari-mutuel Division at the Pari-mutuel raceways as scheduled by the New Jersey Sire Stakes Board of Trustees. There will be a minimum $10,000 Fair "Final" Race in Each Division.** There will be no entry fees for these events and each isopen to the [top ten] **highest** New Jersey Sire Stakes point winners [at the designated track in each Division.] **declared in at the Meadowlands, Garden State and Freehold and the highest New Jersey Sire Stakes point winners at the Fairs in each Division that are declared in and can be drawn to post in first tier.** Trailers are not permitted to start in any New Jersey Sire Stakes Finals.

(b) [Beginning in 1984, all] **All** horses competing in both the Pari-mutuel and Fair finals at all tracks will be determined on a point basis. The point value will be awarded as follows:

1.-5. (No change.)

(c) In the event of less than five starters, the points shall be awarded in the same fashion as the purse breakdown with less than five starters as in N.J.A.C. 2:32-2.18.

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

[(d)] **(e)** In the event of a dead heat for any position in a New Jersey Sire Stakes race, the points will be split equally between the two horses as is currently done with the monies. In the event of a tie [in both points and money, the last spot in the top ten or eight will be drawn by lot.] **for the last spot in the top ten or top eight money winners at the Meadowlands, Garden State, Freehold or the Fairs. The last spot in the Final will be drawn by lot from among the horses tied in both points and money winnings in the Sire Stakes and having the highest point totals and not already included in the Final.**

[2:32-2.36] **2:32-2.32** Supervising Race Secretary

(a) A member of the New Jersey Sire Stakes staff will be appointed Supervising Race Secretary at all [future] Fair meets. [Furthermore, the] **The** New Jersey Sire Stakes Board Secretary is responsible for the complete supervision of the New Jersey Sire Stakes Program as it pertains to the Fair.

(b) Nothing herein shall be construed to rescind or replace any of the powers, rules or regulations of the New Jersey Racing Commission at any race.

[2:32-2.37] **2:32-2.33** Dress requirements

Racing colors, helmet, and white pants in accordance with the New Jersey Racing Commission rules, will be required to be worn by any person warming[-]up a horse on a New Jersey fair track **one hour before post time.** Violators will be subject to a fine or suspension.

[2:32-2.38] **2:32-2.34** Dishonored checks

An individual whose check for [either] a sustaining payment, [a] nominating payment or [an entry] **starting** fee is dishonored by the bank[, will have a period of 10 days from the time the check is returned to the Sire Stakes office in Trenton to make the check good by either a money order or certified check. If the check has not been made good within this time period the individual's name] will be [given] **turned over** to the New Jersey Racing Commission for appropriate action **and the horse or horses will be immediately declared ineligible for all future Sire Stakes events until the check is made good.** [Following this action the Sire Stakes Board of Trustees will decide as to the future eligibility of the horse to the New Jersey Sire Stakes program.]

[2:32-2.39] **2:32-2.35** Separate Fair Division

A separate New Jersey Sire Stakes Fair Division, with a separate payment schedule[, will begin with yearlings nominated in 1980.] **will be in force.**

[2:32-2.40] **2:32-2.36** Fund policy

(No change in text.)

[2:32-2.41] **2:32-2.37** Qualification for Fairs' Universal Driver's Rating Award

(No change in text.)

[2:32-2.42] **2:32-2.38** No cash payment or partial payment

[Beginning in 1985, the] **The** New Jersey Sire Stakes Program will accept no cash payment on nominating and sustaining payments. All fees will be paid in United States Funds. No **post-dated checks or** partial payments on a nominating, sustaining, or entry fee will be accepted on individual horses.

[2:32-2.43] **2:32-2.39** Qualification for the New Jersey Sire Stakes

(No change in text.)

[2:32-2.44] **2:32-2.40** Broadcasting revenues

(No change in text.)

BANKING

(a)

DIVISION OF BANKING

Savings Banks: Credit Cards

Proposed Readoption: N.J.A.C. 3:11-10.

Authorized By: Mary Little Parell, Commissioner, Department of Banking.
Authority: N.J.S.A. 17:9A-182.1 and 182.2.
Proposal Number: PRN 1986-2.

Submit comments by March 5, 1986 to:
Roger F. Wagner, Deputy Commissioner
Department of Banking
36 West State Street
CN 040
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.A.C. 3:11-10 permits State savings banks to issue credit cards, extend credit in connection with the issuance of credit cards and engage in credit card operations upon the same terms and condition as the Federal Home Loan Bank Board may prescribe for federally chartered savings and loan associations. These rules will expire on March 9, 1986. Pursuant to Executive Order No. 66 (1978), these rules were reviewed by the Department of Banking and found to be necessary, adequate, reasonable, efficient, understandable and responsive to the purposes for which they were originally promulgated. The Department proposes to readopt these rules without change.

Social Impact

The readoption of N.J.A.C. 3:11-10 will continue to provide State-chartered savings banks with the authority to provide the public with credit card services not previously offered. The savings banks are provided the ability to maintain competitive parity with Federal savings banks, which aids in the preservation of the dual banking system.

Economic Impact

N.J.A.C. 3:11-10 has provided State savings banks with the opportunity to generate increased revenues and consumers with a choice of credit card products. The Department of Banking incurs minimal costs in administering these rules. There are no costs to the public.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 3:11-10.

ENVIRONMENTAL PROTECTION

The following proposals are authorized by Robert E. Hughey, Commissioner, Department of Environmental Protection.

(a)

OFFICE OF THE COMMISSIONER

Interim Environmental Cleanup Responsibility

Proposed Readoption: N.J.A.C. 7:1-3.

Authority: N.J.S.A. 13:1K-6 et seq., specifically 13:K-10.
DEP Docket No. 003-86-1.
Proposal Number: PRN 1986-8.

Submit comments by March 5, 1986 to:
Joseph N. Schmidt, Jr., Esq.
Office of Regulatory Services
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), the Interim Environmental Cleanup Responsibility Act Regulations, N.J.A.C. 7:1-3 ("Regulations"), will expire on March 5, 1986. The New Jersey Department of Environmental Protection ("NJDEP") originally rejected the option of the normal five year expiration period for the Regulations upon its March 19, 1984 adoption. NJDEP realized that utilization of the innovative environmental protection provisions of the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. ("ECRA" or 'Act"), would be a dynamic process of building upon accumulated ECRA program experiences. However, the tremendous ECRA workload, plus a large number of current year-end ECRA transactions, has resulted in NJDEP's planned revision of the ECRA Regulations after two years becoming unattainable. The drafting of revised Regulations continues with involvement of all appropriate NJDEP personnel. NJDEP needs more time prior to notice, proposal and adoption of revised Regulations pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

NJDEP considered several regulatory options in order to avoid the undue disruption and confusion among citizens and others involved in closing or selling industrial establishments in New Jersey which would be caused by allowing the Regulations to expire. NJDEP decided to readopt the Regulations without change for one additional year until March 5, 1987 and to propose and adopt substantial changes and amendments to the Regulations within this additional one year period. NJDEP solicits comments at this time on the proposed readoption and also on any revisions, additions, or other changes NJDEP should make to the Final Regulations to be adopted by March 5, 1987. NJDEP looks forward to suggestions for improvements of its implementation of ECRA.

The Regulations require the owner or operator of an industrial establishment planning to close or sell or transfer operations to notify the NJDEP no more than five days subsequent to public release of its decision to close operations, or within five days of the execution of any agreement of sale or any option to purchase pursuant to N.J.A.C. 7:1-3.7. N.J.A.C. 7:1-3.7(d) sets forth the minimum information required to be included in the initial ECRA notice submission. N.J.A.C. 7:1-3.7(d)1-8 requires information known as the General Information Submission or ECRA I and N.J.A.C. 7:1-3.7(d)9-17 requires additional more detailed information known as the Site Evaluation Submission or ECRA II. A preliminary site inspection required by N.J.A.C. 7:1-3.8 shall be scheduled and conducted by NJDEP of all industrial establishments notifying NJDEP pursuant to N.J.A.C. 7:1-3.7. The NJDEP's ECRA case manager shall be accompanied by appropriate representatives of the industrial establishment and be given access to all site areas, buildings and records deemed necessary by NJDEP for the purposes of the Act and Regulations. The ECRA case manager shall prepare a preliminary inspection report detailing conditions of the site of the industrial establishment and provide guidance to the owner or operator of the industrial establishment concerning ECRA compliance.

Pursuant to N.J.A.C. 7:1-3.9, the owner or operator of an industrial establishment shall submit and, after written NJDEP approval, implement prior to submission of their negative declaration or cleanup plan a detailed soil, groundwater and surface water sampling plan for the site of the industrial establishment reflecting known historical and current uses of the site. N.J.A.C. 7:1-3.7(d)14 sets forth the requirements of a detailed sampling plan of the purposes of the Regulations.

N.J.A.C. 7:1-3.10(a) requires that the owner or operator of an industrial establishment planning to close operations shall, upon closing operations or 60 days subsequent to public release of its decision to close or transfer operations, whichever is later, submit to the NJDEP for approval either a negative declaration prepared pursuant to N.J.A.C. 7:1-3.11 or a cleanup plan prepared pursuant to N.J.A.C. 7:1-3.12. N.J.A.C. 7:1-3.10(b) requires that the owner or operator of an industrial establishment planning to sell or transfer operations shall, within 60 days prior to transfer of title, submit to the NJDEP for approval either a negative declaration prepared pursuant to N.J.A.C. 7:1-3.11 or a cleanup plan prepared pursuant to N.J.A.C. 7:1-3.12. The owner or operator of an industrial establishment shall obtain a surety bond or other financial security approved by the NJDEP guaranteeing performance of the cleanup plan in an amount equal to the cost estimate for the cleanup plan pursuant to N.J.A.C. 7:1-3.13. Industrial establishments subject to N.J.A.C. 7:1-3.10(a) would be required to submit this bond or security with the cleanup plan, subject to a revision of the amount thereof upon written approval by the NJDEP of the cleanup plan. Industrial establishments subject to N.J.A.C. 7:1-3.10(b) would be required to submit this bond or security upon approval of the cleanup plan, again subject to appropriate revisions. N.J.A.C. 7:1-3.11 establishes the criteria for negative declarations and N.J.A.C. 7:1-3.12 establishes the criteria for cleanup plans that must be compiled with by the owner or operator of industrial establishments, as appropriate.

N.J.A.C. 7:1-3.14 establishes a procedure that allows the Department to approve, conditionally approve or deny deferral of cleanup plan implementation if the industrial establishment would be subject to substantially the same use. Please note that the NJDEP's authority to defer implementation of

the cleanup plan has not been construed to limit, restrict or prohibit the NJDEP from directing site cleanup nor limit the liabilities of past owners or operators under any statute, rule or regulation.

N.J.A.C. 7:1-3.15 provides that until adoption of minimum standards required pursuant to Section 5(a) of the Act, the NJDEP shall review and approve or disapprove negative declarations and cleanup plans on a case-by-case basis for soil, groundwater and surface water quality necessary for the detoxification of the site of an industrial establishment, including buildings and equipment, to ensure that the potential for harm to public health and safety is minimized to the maximum extent practicable, taking into consideration the locations of the site and surrounding ambient conditions.

N.J.A.C. 7:1-3.17 establishes special ECRA compliance provisions for the owners or operators of industrial establishments initiating the sale or closure of operations before the December 31, 1983 effective date of the Act. N.J.A.C. 7:1-3.20 provides procedures for amending the Regulations to exempt sub-groups within the definition of industrial establishment as a class from the requirements of the Regulations and the Act upon a determination that their type of industrial establishment does not pose a risk to public health and safety.

The Act establishes several options to deal with violations of the Act and the Regulations outline these provisions at N.J.A.C. 7:1-3.16, including voiding the sale or transfer of an industrial establishment by the transferee and the Department, strict liability without regard to fault for all cleanup and removal costs and indirect damages resulting from any failure to implement a cleanup plan, penalties of $25,000 for each day a violation continues and personal liability for any penalties levied by any officer or management official who knowingly directs or authorizes the violation of any provision of the Act or the Regulations. Please note that nothing in the Act or the Regulations has been construed to limit, restrict or prohibit the NJDEP from directing immediate site cleanup under any other statute, rule or regulation. In addition, given that NJDEP approvals of negative declarations and cleanup plans pursuant to the Regulations will be based upon existing information and standards, N.J.A.C. 7:1-3.21(a) expressly reserves the right of the NJDEP to require remedial actions for subsequent closing, terminations or transferring of operations of industrial establishments covered by the Act.

Social Impact

The proposed readoption of N.J.A.C. 7:1-3 will allow NJDEP to continue, in full force and effect, the successful ECRA program requiring adequate preparation and implementation of acceptable cleanup procedures as a precondition to the closure or sale of industrial establishments in New Jersey. Thus, the proposed readoption will continue the important and innovative NJDEP tool further minimizing the exposure of the citizens, property and natural resources of the State to the inherent dangers of handling, storage and disposal of hazardous substances and wastes.

Economic Impact

The proposed readoption of these rules would result in a continuation of the existing ECRA program. The Regulations will require owners or operators of industrial establishments to prepare and submit information and to finance implementation of detailed sampling plans and cleanup plans, including obtaining a surety bond or other financial security for the cleanup, as required by the NJDEP. Potential delays during the NJDEP's initial implementation efforts under the Act may cause additional costs during real estate transactions. However, the Legislature and the NJDEP continues to believe that the owner or operator of industrial establishments should properly incur these expenses as a precondition to the closure or sale of operations rather than the citizens and taxpayers of New Jersey at some later date.

Environmental Impact

The proposed readoption of N.J.A.C. 7:1-3 will have the positive environmental impact of continuing without interruption the regulatory framework necessary to implement the benefits of ECRA. NJDEP firmly believes that the Regulations have a major positive environmental impact for the citizens, property and natural resources of New Jersey. The Regulations provide the NJDEP with an important remedial tool to significantly reduce the occurrence of future abandoned contaminated site problems throughout the State.

Full text of the proposed readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:1-3.

(a)

DIVISION OF WATER RESOURCES

Construction Grants and Loans for Wastewater Treatment Facilities

Proposed New Rule: N.J.A.C. 7:22-1, 2 and 5
Proposed Repeal: N.J.A.C. 7:22-1, 2 and 4

Authority: N.J.S.A. 13:1D-1 et seq., 58:10A-1 et seq., 58:11A-1 et seq. and P.L. 1985, c.209.
DEP Docket No. 002-86-01.
Proposal Number: PRN 1986-10.

A **public hearing** concerning this proposal will be held on:
February 25, 1986 at 10:00 A.M.
Rutgers Labor Education Center, Room 115
Ryders Lane
New Brunswick, New Jersey

Submit comments by March 5, 1986 to:
Rachel Lehr, Esq.
Office of Regulatory Services
Department of Environmental Protection
CN-402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule is made necessary by the passage of the legislative appropriation (P.L. 1985 c.209) to the Department of Environmental Protection (Department) for the Sewerage Facilities Construction Program (Federal match) in the amount of $15,000,000. The appropriation was made to provide State matching loans to local government units for a portion of the project costs where a Federal grant under the Clean Water Act was made. Previously, State matching grants were provided to Federal grantees. The proposed new rule incorporates the State matching loan program into the State matching grant program, as appropriate.

Proposed new rule N.J.A.C. 7:22-1 contains the general provisions of Chapter 22, Construction Grants and Loans for Wastewater Treatment Facilities, including the scope, purpose and brief overview of the eligibility and priority ranking criteria for the matching grant and loan programs.

Proposed new rule N.J.A.C. 7:22-2 describes the procedures and requirements for the awarding of State matching grants and State matching loans. Sections include: Definitions, Application procedures, Departmental evaluation and approval/disapproval, Loan terms and conditions, Grant conditions, Allowable project costs, Project changes, Non-compliance and Termination. Since receiving State assistance is predicated on being awarded a Federal grant, many program requirements of the local government unit receiving State assistance have been met under the Federal grant program.

Proposed new rule N.J.A.C. 7:22-5 establishes the minimum standards of conduct for person participating in any State or Federal wastewater treatment facility construction grant or loan program. Specific standards of conduct regarding public accountability, disclosure, gifts and gratuities for officers, employees, agents and members of wastewater utilities are included in this subchapter. These rules were formerly codified at N.J.A.C. 7:22-4, which is proposed for repeal.

Social Impact

As many local governments have experienced, the lack of adequate capacity or treatment capabilities at their plants has a limiting effect on growth in their communities. With many wastewater treatment facilities in the State either facing or currently under sewer bans, the potential social benefits (as well as other benefits) cannot be fully realized. Appropriations to the Department for the above mentioned purpose will permit the expansion of wastewater treatment facilities and allow for planned growth in the State's communities. The proposed new rule will assist these communities to reach their objectives.

Economic Impact

The $15,000,000 appropriation provides 8% State matching loans to Federal Fiscal Year 1984 grantees. It is anticipated, since this is a loan program and monies will be returned to the State, that future appropriations (including the $15,000,000 proposed for Fiscal Year 1987) will be made to continue State financial assistance for the construction of wastewater treatment facilities. Rules and regulations for the State grant program remain in the proposed new rule since come of the monies from three previous Bond Acts (the Clean Waters Bond Act of 1976, the Water Conservation Bond Act of 1969 and the Natural Resources Bond Act of 1980) have not been used.

A positive economic impact will result from the appropriation of State monies to provide local government units with loans for the construction of wastewater treatment facilities. Such financial assistance will help offset the cost of constructing and operating wastewater treatment facilities, costs which significantly increase the cost of wastewater disposal.

While it is the responsibility of local government units to plan for the rational and environmentally sound treatment of wastewater, the State has accepted the responsibility to help alleviate the local government unit's financial burden in order to facilitate the transition to environmentally sound wastewater treatment methods.

Environmental Impact

The proposed new rule promotes an environmentally sound strategy for the disposal of wastewater necessary for the protection of the public health and safety and the preservation of the State's natural resources.

Full text of the proposed repeal appears in the New Jersey Administrative Code at N.J.A.C. 7:22-1, 2 and 4.

Full text of the proposed new rule follows.

SUBCHAPTER 1. GENERAL PROVISIONS

7:22-1.1 Scope and construction

(a) This subchapter shall constitute the rules governing disposition of appropriations for the purposes of planning, design, and construction of wastewater treatment facilities. These rules prescribe procedures for application, award, and administration of grants and loans, accounting and record keeping procedures, loan repayment requirements, minimum standards of conduct for recipients, and standards for construction of wastewater treatment facilities.

1. State matching grants (to match Federal grant awards) shall be made pursuant to the Clean Waters Bond Act of 1976, P.L. 1976, c.92, the Water Conservation Bond Act of 1969, P.L. 1969, c.127, and the Natural Resources Bond Act of 1980, P.L. 1980, c.70.

2. State matching loans (to match Federal grant awards) shall be made pursuant to N.J.S.A. 13:1D-1 et seq. and N.J.S.A. 58:11A-1 et seq., P.L. 1985, c.209 and any subsequent budgetary appropriations thereto.

(b) These rules shall be liberally construed to permit the Department to effectuate the purposes of the law.

7:22-1.2 Purpose

(a) The rules in this chapter are promulgated for the following purposes:

1. To implement the purposes and objectives of the Clean Waters Bond Act of 1976, P.L. 1976, c.92, the Water Conservation Bond Act of 1969, c.127; the Natural Resources Bond Act of 1980, P.L. 1980, c.70; N.J.S.A. 13:1D-1 et seq. and N.J.S.A. 58:11A-1 et seq., P.L. 1985, c.209, and any subsequent budgetary appropriations thereto;

2. To establish policies and procedures for distribution of funds for the planning, design and construction of wastewater treatment facilities;

3. To protect the public and the State of New Jersey by insuring that funds appropriated are spent in a proper manner and for the intended purposes;

4. To assure that the distribution and use of funds are consistent with the laws and policies of the State of New Jersey;

5. To establish minimum standards of conduct to prevent conflicts of interest and insure proper administration of grants and loans;

6. To establish accounting procedures for the administration of grants and loans;

7. To establish loan repayment requirements; and

8. To establish standards for the construction of wastewater treatment facilities.

7:22-1.3 State matching grants

(a) The Department shall request that the Legislature appropriate funds for the purpose of awarding matching grants under the Clean Waters Bond Act of 1976, P.L. 1976, c.92,

the Water Conservation Bond Act of 1969, c.127, and the Natural Resources Bond Act of 1980, P.L. 1980, c.70.

1. No project that is eligible for a State matching grant pursuant to this section is eligible for a State matching loan or for State assistance from the Wastewater Treatment Fund (P.L. 1985, c.329) pursuant to Subchapter 3 of these regulations or from the Wastewater Treatment Trust Fund (P.L. 1985, c.334).

2. Projects shall receive priority based on the date on which the Federal grant was made.

3. The maximum amount for each project receiving a State matching grant shall be eight percent of the costs which are determined under regulations of the United States Environmental Protection Agency (USEPA) (40 CFR Part 35) to be eligible for Federal grant funds.

4. Only those projects receiving State certification for Federal grants prior to Federal Fiscal Year 1984 (that is, prior to October 1, 1983) are eligible to receive State matching grants.

7:22-1.4 State matching loans

(a) The Department shall award State matching loans pursuant to N.J.S.A. 13:1D-1 et seq., N.J.S.A. 58:11-1 et seq. and P.L. 1985, c.209 and other appropriations bills providing funds to the Department for the purposes of this subchapter.

1. No project that is eligible for a State matching loan pursuant to this section is eligible for a State matching grant or for State assistance from the Wastewater Treatment Fund (P.L. 1985, c.329) pursuant to Subchapter 3 of these regulations or from the Wastewater Treatment Trust Fund (P.L. 1985, c.334).

2. Projects shall receive priority based on the date on which the Federal grant was made.

3. The maximum amount for each project receiving a State matching loan shall be eight percent of the costs which are determined under regulations of USEPA (40 CFR Part 35) to be eligible for Federal grant funds.

4. Those projects receiving State certification for Federal grants in Federal Fiscal Year 1984 and later (from October 1, 1983 on) are eligible to receive only State matching loans.

7:22-1.5 Severability

If any provision of these rules or the application thereof is held invalid, such invalidity shall not affect other provisions or applications which can be given effect without the provisions of these rules.

SUBCHAPTER 2. MATCHING GRANT AND MATCHING LOAN PROCEDURES AND REQUIREMENTS

7:22-2.1 Scope and purpose

(a) This subchapter shall prescribe procedures and requirements for the awarding of:

1. State matching grants pursuant to the Clean Waters Bond Act of 1976, P.L. 1976, c.92, the Water Conservation Bond Act of 1969, P.L. 1969, c.127; and the Natural Resources Bond Act of 1980, P.L. 1980, c.70; and

2. State matching loans pursuant to the acts of the Legislature appropriating funds to the Department for construction of wastewater treatment facilities pursuant to P.L. 1985, c.209, and any subsequent budgetary appropriations thereto.

7:22-2.2 Definitions

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

"Applicant" means any political subdivision or special district of the State or agency thereof having jurisdiction over disposal of sewage, industrial waste or other wastes or a designated and approved management agency under section 208 of the Federal Act that applies for a grant or loan pursuant to the provisions of these rules and regulations.

"Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection.

"Construction" means the preliminary planning to determine the economic and engineering feasibility of wastewater treatment facilities, the engineering, architectural, legal, fiscal, and economic investigations and studies; surveys, designs, plans, working drawings, specifications, procedures, and other action necessary to the construction of wastewater treatment facilities; the erection, building, acquisition, alteration, remodeling, improvement, or extension of wastewater treatment facilities; and the inspection and supervision of the construction of wastewater treatment facilities.

"Department" means the New Jersey Department of Environmental Protection.

"Director" means the Director of the Division of Water Resources of the Department of Environmental Protection.

"Division" means the Division of Water Resources, New Jersey Department of Environmental Protection.

"Eligible costs" means costs which are determined under regulations of the United States Environmental Protection Agency to be eligible for Federal grant funds.

"Federal Act" means the Clean Water Act, 33 U.S.C. 1251 et al., and any amendatory or supplementary acts thereto.

"Federal grant" means a grant awarded pursuant to section 201 of the Federal Act.

"Final construction cost" means the actual eligible cost of the final work in place, the scope of which is defined in the grant or loan award documents.

"Grant" means a State matching grant of the eligible costs of a project receiving a Federal grant.

"Grant agreement" means the legal instrument executed between the State of New Jersey and the recipient for the construction of wastewater treatment facilities. The agreement will specify: budget and project periods; the State share of eligible project costs; a description of the project scope of services to be performed; and any special conditions.

"Loan" means a State matching loan of the eligible costs of a project receiving a Federal grant.

"Loan agreement" means the legal instrument executed between the State of New Jersey and the recipient for the construction of wastewater treatment facilities. The agreement will specify: budget and project periods; the State share of eligible project costs; a description of the project scope of services to be performed; and any special conditions.

"Low bid construction costs" means the actual eligible cost associated with the award of all contracts within a project scope to the lowest responsible and responsive bidder(s).

"N.J.P.D.E.S." means the New Jersey Pollutant Discharge Elimination System, N.J.A.C. 7:14A-1.

"Project" means the defined scope of services for the construction of specified facilities as approved by the Department in the grant or loan agreement.

"Recipient" means an applicant who has received a State grant or loan.

"Wastewater treatment facilities" includes, but is not limited to, the plants, structures and personal property acquired, constructed or operated or to be acquired, constructed or operated in whole or in part by or on behalf of the State or a political subdivision or subdivisions thereof, including pumping and ventilating stations, sewage treatment systems, plants and works, connections, outfalls, combined sewer, overflows, interceptors, trunklines, collection systems and other personal property, and appurtenances necessary or useful and convenient for the treatment, purification, or disposal in a sanitary manner of any sewage liquid or solid wastes, night soil, or industrial wastes to preserve and protect natural water resources and facilities.

7:22-2.3 Pre-application procedures

The Department encourages informal inquiries by potential State grant or loan applicants prior to application submission in order to expedite preparation and evaluation of the grant or loan application documents. Such inquiries may relate to procedural or substantive matters and may range from informal telephone advice to prearranged briefings of potential applicants. Questions should be directed to: Assistant Director, Construction Grants Administration Element, Division of Water Resources, CN-029, Trenton, New Jersey 08625; Telephone: (609) 292-8961.

7:22-2.4 Application procedures

(a) A grant or loan application shall include the completed application forms, technical documents, and supplementary materials furnished by the applicant. It is the responsibility of the applicant to ensure that the Department has received all necessary documentation in a timely manner. Submissions which do not substantially comply with this subchapter shall not be processed further. Applications shall comply with the following standards:

1. Applications shall be signed by the applicant or a person authorized by resolution to obligate the applicant to the terms and conditions of the grant or loan.

2. Each grant or loan shall constitute an offer to accept the requirements of this subchapter and the terms and conditions of the grant or loan agreement.

3. Applications shall be submitted well in advance of the desired grant or loan award date. Generally, processing of a grant or loan application by the Division requires 60 calendar days after receipt of a complete application by the Division where a Federal grant has been awarded. A State grant or loan shall not be made until a Federal grant has been awarded. Nor shall a grant or loan be made until a State appropriation is made therefor.

4. Applications shall be sent to: Assistant Director, Construction Grants Administration Element, Division of Water Resources, CN 029, Trenton, New Jersey 08625.

5. The following documents shall be submitted when applying for a State grant or loan:

i. Application for State assistance for wastewater treatment facilities;

ii. Resolution authorizing the filing of an application for State assistance;

iii. Statement of assurances;

iv. Assurance of compliance with federal and State civil rights conditions;

v. An executed Federal grant agreement; and

vi. Such other forms as the Department may require.

6. Applications shall be accompanied by all necessary agreements and subagreements.

(b) An applicant for a State loan shall submit a description of how it plans to repay the loan, the steps it has taken to implement this plan and the steps it plans to take before receiving the loan that will guarantee that at the time of the signing of the loan agreement it will be irrevocably committed to repay the loan.

7:22-2.5 Use and disclosure of information

All grant or loan applications, pre-applications, and other submittals, when received by the Department, constitute public records of the Department. The Department shall make them available to persons who request their release, to the extent required by New Jersey and Federal law.

7:22-2.6 Evaluation of application

(a) The Department shall notify the applicant that it has received the application and is evaluating it pursuant to this section. Each application shall be subject to:

1. Preliminary administrative review to determine the completeness of the application;

2. Program, technical, and scientific evaluation to determine the merit and relevance of the project to the Department's program objectives;

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

4. Final administrative evaluation.

7:22-2.7 Supplemental information

At any stage during the evaluation process, the Department may request the applicant to furnish documents or information required by this subchapter and necessary to complete full review of the application. The Department may suspend its evaluation until such additional information or documents have been received.

7:22-2.8 Department approval/disapproval

(a) After a full review and evaluation of an application, the Department shall take one of the following actions:

1. Approve for grant or loan award;

2. Defer, where no State appropriation has been made; or

3. Disapprove the application.

(b) The Department shall not approve an application unless a State appropriation has been made therefor. The applicant shall be promptly notified in writing of any approval, deferral, or disapproval. A deferral or disapproval of an application shall not preclude its reconsideration or resubmittal. An applicant may request a hearing pursuant to N.J.A.C. 7:22-2.35.

7:22-2.9 Amount and term of a grant or loan

(a) The amount and term of a grant or loan shall be determined at the time of grant or loan award. The amount of the grant or loan shall be based upon eligible project costs for which a Federal grant has been awarded. In no event shall the amount of the grant exceed the amount appropriated by the Legislature for the recipient's project. In addition, in no event shall the amount of the loan exceed the amount for which the project is eligible or the amount available for the award of loans.

(b) The initial interest rate of loans shall be set at an annual rate of two percent. Future interest rates shall be consistent with those rates set for loans from the Wastewater Treatment Fund estabished pursuant to P.L. 1985, c.329.

(c) The loan maturity period shall be a period of no more than 10 years from the date of initiation of operation as identified in the loan agreement. Principal and accrued interest

may be prepaid by the borrower prior to the end of the loan maturity period without penalty.

(d) Specific loan terms shall be made available to applicants by the Department prior to execution of any loan award agreement.

7:22-2.10 State share

The State share shall be set forth in the grant or loan agreement expressed both as a dollar amount and as a percentage of eligible project costs for which a Federal grant has been awarded. Such dollar amount shall represent the grant or loan ceiling. The State share shall not exceed eight percent of the eligible costs.

7:22-2.11 Grant or loan agreement

Upon execution of the grant or loan agreement by the Department, the Department shall transmit the grant or loan agreement (certified mail, return receipt requested) to the applicant for execution. The applicant shall execute it and return it within 30 calendary days after receipt. The Department may, at its discretion, extend the time for execution. The grant or loan agreement shall set forth the approved project scope, budget (including the Federal and State shares) and project periods, and total project costs. The grant or loan agreement shall be deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department in the application process.

7:22-2.12 Effect of the grant or loan award

(a) A grant shall constitute an obligation of the Water Conservation Bond Act, Clean Waters Bond Act, or Natural Resources Bond Act funds in the amount and for the purposes stated in the grant agreement.

(b) A loan shall become effective immediately after its execution by the Department and the applicant and shall constitute an obligation of the Department in the amount, and for the purpose stated in the loan agreement.

(c) Neither the approval of a project nor the award of any grant or loan shall commit or obligate the Department to award any continuation grant or loan or to enter into any grant or loan agreement, including grant or loan increases to cover cost overruns, with respect to any approved project or portion thereof.

(d) Nor shall the Department's approval be used as a defense, by the applicant, to any action by any agency for the applicant's failure to obtain all requisite permits, licenses and operating certificates.

7:22-2.13 Eligibility and criteria

An applicant is eligible for a State grant or loan if the applicant has been awarded a Federal grant pursuant to Section 201 of the Federal Act. A project shall receive priority for State assistance based upon the date on which a Federal grant has been awarded.

7:22-2.14 Allowable project costs

(a) Project costs shall be allowed to the extent permitted by 40 CFR 35.2250 or any amendments thereto under the Federal grant program pursuant to section 201 of the Federal Act, and to the extent permitted by this subchapter.

(b) Project costs shall be computed as directed by 40 CFR Parts 30 and 33 et seq. and amendments thereto.

(c) Notwithstanding (a) and (b) above, the Department shall not allow costs for work that the Department determines is not in compliance with specifications or requirements of project contracts. Costs of such work shall be ineligible.

7:22-2.15 Unused funds

(a) Where the total amount paid under a grant or grant amendments for the final construction costs is less than the amount appropriated by the Legislature for the grantee's project, the difference in amount shall be deobligated and retained by the State for a reallocation pursuant to the Clean Waters Bond Act, P.L. 1976, c.92, the Water Conservation Bond Act of 1969, P.L. 1969, c.127, the Natural Resources Bond Act of 1980, P.L. 1980, c.70 and this chapter.

(b) Where the total amount paid under a loan for the low bid construction cost is less than the initial loan award, and/or where the total amount paid under a loan for the final construction cost is less than the low bid construction cost, the difference in each amount shall be deobligated and retained by the Department to be reallocated to other wastewater treatment facilities projects.

7:22-2.16 Fraud and other unlawful or corrupt practices

(a) The recipient shall administer grants or loans, acquire property pursuant to the grant or loan agreement, and award contracts and subcontracts under those grants or loans free from bribery, graft, kickbacks, and other corrupt practices. The recipient bears the primary responsibility for the prevention, detection, and cooperation in the prosecution of any such conduct; the State shall also have the right to pursue administrative or other legally available remedies.

(b) The recipient shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The recipient shall notify the director immediately when such allegation or evidence comes to its attention, and shall periodically advise the director of the status and ultimate disposition of any matter.

7:22-2.17 Grant or loan conditions

(a) The following requirements, in addition to such statutes and regulations as may be applicable to particular grants or loans, are conditions to each grant or loan and conditions to each payment under a grant or loan award.

1. The recipient shall comply with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

2. The recipient shall certify that it and its contractors and subcontractors are maintaining their financial records in accordance with generally accepted accounting principles and auditing standards for governmental institutions.

3. The recipient shall comply with the Department's standards of conduct. (See: N.J.A.C. 7:22-5)

4. The recipient shall provide a copy of the N.J.P.D.E.S. permit or otherwise provide an identification of effluent discharge limitations.

5. The recipient shall comply with the Civil Rights Act of 1964 (P.L. 88-352) as well as the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., as amended.

6. The recipient shall adopt a system of user charges and a sewer use ordinance consistent with 40 CFR 35.2208 and other applicable laws and regulations.

7. The recipient shall establish an effective regulatory program pursuant to N.J.S.A. 58:10A-6 et seq. and enforce pretreatment standards which comply with 40 CFR 403.

8. The recipient shall comply with all pertinent requirements of Federal, State and local environmental laws.

9. The recipient shall pay the non-State and non-Federal costs of the construction (that is, facilities planning, design, building and related costs) which are associated with the project. The recipient shall be responsible to complete the construction of the project.

10. The recipient shall comply with the requirements governing Federal grants under the Federal Act, including 40 CFR 30.100 et seq., 40 CFR 33.001 et seq., and 40 CFR 35.200 et seq. Failure of the recipient to comply with Federal requirements shall constitute noncompliance with these regulations and shall give rise to the remedies provided in N.J.A.C. 7:22-2.28 to 7:22-2.34.

11. The grant or loan agreement or any amendment thereto may include special conditions necessary to assure accomplishment of the project or Department objectives. The recipient shall comply with any special conditions which the Department requires in the grant agreement or any amendment thereto.

12. Qualified personnel and chief operating officer:

i. The recipient shall retain sufficient qualified operating and management personnel from the time of completion of construction or commencement of operation, whichever is earlier, until such time as the operation of the facility is discontinued; and

ii. The recipient shall retain a qualified chief operating officer or executive director.

13. Construction of the project, including letting of contracts in connection therewith, shall conform to applicable requirements of Federal, State, and local laws, ordinances, rules and regulations and to contract specifications and requirements.

14. (Reserved)

15. No payment under a grant or loan shall be made to a recipient who has received any State loan until the total past due thereunder including principal and interest has been repaid, except as follows: In order to facilitate full or partial payment of such loan obligation the Department may, at its discretion, make a grant or loan payment where it simultaneously receives from the recipient an amount in repayment of said loan obligation at least equal to the grant or loan payment. Nothing in this paragraph shall in any way limit any right or duty of the Department to demand and collect at any time the total due under any such past loan.

16. The recipient shall comply with the following guidelines of the Department: "Environmental Guidelines for the Planning, Designing, and Construction of Interceptor Sewers" (April, 1978) and "Construction Requirements for the Construction of Sewerage Facilities" (August, 1977). The guidelines can be obtained from: Assistant Director, Construction Grants Administration Element, Division of Water Resources, CN 029, Trenton, N.J. 08625.

17. The recipient shall certify that it has not and will not enter into any contract with nor has any subcontract been or will be awarded to any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5 for any services within the scope of work.

(b) The recipient shall certify that it is in compliance with all requirements and conditions of the grant or loan agreement.

7:22-2.18 Administration and performance of grants or loans

The recipient bears primary responsibility for the administration and success of the grant or loan project, including any subagreements made by the recipient for accomplishing grant or loan objectives. Although recipients are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions from the recipient to the Department. The primary concern of the Department is that grant or loan funds awarded pursuant to this subchapter be used in conformance with applicable Federal and State requirements to achieve grant or loan and program objectives to promote the most efficient use of public funds, and to make optimum contributions to the betterment of the environment.

7:22-2.19 Access

(a) The recipient and its contractor and subcontractors shall provide access to the Department personnel and any authorized representative of the Department to the facilities, premises and records related to the project.

(b) The recipient shall submit to the Department such documents and information as requested by the Department.

1. All recipients, contractors and subcontractors may be subject to a financial audit.

2. For State grants, records shall be retained and available to the Department for a minimum of three years after issuance of the final grant payment by the Department. If litigation, a claim, an appeal, or an audit is begun prior to the end of the three year period, records shall be retained and available until the three years have passed or until the said action is completed and resolved, whichever is longer.

3. For State loans, records shall be retained and available to the Department until the final loan repayment has been made.

7:22-2.20 State payment

Payment of State funds shall be made at intervals as work progresses and expenses are incurred, but in no event shall payment exceed eight percent of the eligible costs which have been incurred to that time. Each payment shall be signed and approved by the commissioner or his authorized representative.

7:22-2.21 Assignment

The right to receive payment under a grant or loan may not be assigned, nor may payments due under a grant or loan be similarly encumbered.

7:22-2.22 Publicity and signs

(a) Press releases and other public dissemination of information by the recipient concerning the project work shall acknowledge State grant or loan support.

(b) A project identification sign shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project and State grant or loan support.

7:22-2.23 Debarment

(a) No recipient shall enter into a contract for work on a wastewater treatment project with any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5.

(b) Recipients shall insert in every contract for work on a project a clause stating that the contractor may be debarred, suspended or disqualified from contracting with the State and the Department if the contractor commits any of the acts listed in N.J.A.C. 7:1-5.2.

(c) The recipient, prior to acceptance of State funds, shall certify that no contractor or subcontractor is included on the State Treasurer's List of Debarred, Suspended and Disqualified Bidders as a result of action by a State agency other than the Department of Environmental Protection. If State funds are used for payment to a debarred film, the Department reserves the right to immediately "call" the loan and take such other action pursuant to N.J.A.C. 7:1-5 as is appropriate.

(d) Whenever a bidder is debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C.

7:1-5, the recipient may take into account the loss of State loan funds under these regulations which result from awarding a contract to such bidder, in determining whether such bidder is the lowest responsive, responsible bidder pursuant to law; and the recipient may advise prospective bidders that these procedures will be followed.

(e) Any person included on the Treasurer's List as a result of action by a State agency other than the Department, who is or may become a bidder on any contract which is or will be funded by loan under this subchapter may present information to the Department why this section should not apply to such person. If the Commissioner determines that it is essential to the public interest and files a finding thereof with the Attorney General, the Commissioner may grant an exception from the application of this section with respect to a particular contract, in keeping with N.J.A.C. 7:1-5.9. In the alternative the Department may suspend or debar any such person, or take such action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

7:22-2.24 Project changes and grant or loan modifications

(a) A grant or loan modification means any written alteration of the grant or loan amount, grant or loan terms or conditions, budget or project method or other administrative, technical or financial agreements.

(b) The recipient shall promptly notify the assistant director in writing (certified mail, return receipt requested) of events or proposed changes which may require a grant or loan modification, including but not limited to:

1. Rebudgeting;
2. Changes in approved technical plans or specifications for the project;
3. Changes which may affect the approved scope or objectives of a project;
4. Significant, changed conditions at the project site;
5. Acceleration or deceleration in the time for performance of the project or any major phase thereof;
6. Changes which may increase or substantially decrease the total cost of a project;
7. Changes in key personnel identified in the grant or loan agreement or a reduction in time of effort devoted to the project by such personnel; or
8. Changes in construction contracts.

(c) If the Department decides a formal grant or loan amendment is necessary, it shall notify the recipient and a formal grant or loan amendment shall be prepared in accordance with N.J.A.C. 7:22-2.25. If the Department decides a formal grant or loan amendment is not necessary, it shall follow the procedures of N.J.A.C. 7:22-2.26 or 2.27, as applicable.

7:22-2.25 Formal grant or loan amendments

(a) The Department shall require a formal grant or loan amendment to change principal provisions of a grant or loan where project changes substantially alter the cost or time of performance or the project or any major phase thereof; or substantially alter the objective or scope of the project by key personnel.

(b) The Department and recipient shall effect a formal grant or loan amendment only by a written amendment to the grant or loan agreement.

7:22-2.26 Administrative grant or loan changes

Administrative changes by the Department, such as a change in the designation of key Department personnel or of the office to which a report is to be transmitted by the recipient, or a change in the payment schedule for grants or loans for construction of wastewater treatment facilities, constitute changes to the grant or loan agreement (but not necessarily to the project work) and do not affect the substantive rights of the Department or the recipient. The Department may issue such changes unilaterally. Such changes shall be in writing and shall generally be effected by a letter (certified mail, return receipt requested) to the recipient.

7:22-2.27 Other changes

All other project changes, which do not require formal grant or loan amendment, require written approval of the assistant director of the division.

7:22-2.28 Noncompliance

(a) In addition to other remedies as may be provided by law, in the event of noncompliance with any grant or loan condition, requirement of this subchapter, or contract requirement or specification, the Department may take any of the following actions or combinations thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:22-2.29;
2. Withhold grant or loan funds pursuant to N.J.A.C. 7:22-2.30;
3. Order suspension of project work pursuant to N.J.A.C. 7:22-2.31;
4. Terminate or rescind a grant or loan pursuant to N.J.A.C. 7:22-2.32 and 7:22-2.33; or
5. Issue administrative orders of enforcement pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

7:22-2.29 Notice of Noncompliance

Where the Department determines that the recipient is in noncompliance with any condition or requirement of these rules or with any contract specification or requirement, it shall notify the recipient, its engineer, and/or the contractor of the noncompliance. The Department may require the recipient, its engineer, and/or contractor to take and complete corrective action within 10 working days of receipt of notice. If the recipient, its engineer, and/or contractor do not take corrective action or if it is not adequate, then the Department may issue a stop-work order or withhold payment. The Department may, however, issue a stop-work order or withhold payment pursuant to N.J.A.C. 7:22-2.30 and 2.31 without issuing a notice pursuant to this section.

7:22-2.30 Withholding of funds

The Department may withhold a grant or loan payment or any portion thereof where it determines in writing that a recipient has failed to comply with any grant or loan condition, provision of this subchapter, or contract specification or requirement.

7:22-2.31 Stop-work orders

(a) The Department may order work to be stopped for good cause. Good cause shall include, but not be limited to, default by the recipient or noncompliance with the terms and conditions of the grant or loan. The Department shall limit use of a stop-work order to those situations where it is advisable to suspend work on the project or portion or phase of the project for important program or Department considerations.

(b) Prior to issuance, the Department shall afford the recipient an opportunity to discuss the stop-work order with the Department personnel. The Department shall consider such discussions in preparing the order. Stop-work orders shall contain:

1. The reasons for issuance of the stop-work order;
2. A clear description of the work to be suspended;
3. Instructions as to the issuance of further orders by the recipient for materials or services;
4. Guidance as to action being taken on sub-agreements; and
5. Other suggestions to the recipient for minimizing costs.

(c) The Department may, by written order to the recipient (certified mail, return receipt requested), require the recipient to stop all, or any part of, the project work for a period of not more than 45 days after the recipient receives the order, and for any further period to which the parties may agree.

(d) The effects of a stop-work order are as follows:

1. Upon receipt of a stop-work order, the recipient shall immediately comply with the terms thereof and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the suspension period or within any extension of that period to which the parties shall have agreed, the Department shall either:

i. Rescind the stop-work order, in full or in part;

ii. Terminate the work covered by such order as provided in N.J.A.C. 7:22-2.32; or

iii. Authorize resumption of work.

2. If a stop-work order is cancelled or the period of the order or any extension thereof expires, the recipient shall promptly resume the previously suspended work. An equitable adjustment shall be made in the grant or loan period, and the grant or loan agreement shall be modified accordingly within the discretion of the Department. However, any additional project costs as a result of this action shall be the responsibility of the recipient.

7:22-2.32 Termination of grants or loans

(a) The Department may terminate a grant or loan for good cause subject to negotiation and payment of appropriate termination settlement costs. The term "good cause" shall include, but not be limited to, substantial failure to comply with the terms and conditions of the grant or loan, or default by the recipient.

1. The Department shall give written notice to the recipient (certified mail, return receipt requested) of intent to terminate a grant or loan in whole or in part at least 10 days prior to the intended date of termination.

2. The Department shall afford the recipient an opportunity for consultation prior to any termination. After such opportunity for consultation, the Department may, in writing (certified mail, return receipt requested), terminate the grant or loan in whole or in part.

(b) A recipient shall not unilaterally terminate the project work for which a grant or loan has been awarded, except for good cause and subject to negotiation and payment of appropriate termination settlement costs. The recipient shall promptly give written notice to the director of any complete or partial termination of the project work by the recipient. If the Department determines that there is good cause for the termination of all or any portion of a project for which the grant or loan has been awarded, the Department may enter into a termination agreement or unilaterally terminate the grant or loan effective with the date of cessation of the project work by the recipient. If the Department determines that a recipient has ceased work on a project without good cause, the Department may unilaterally terminate the grant or loan pursuant to this section or annul the grant or loan pursuant to N.J.A.C. 7:22-2.33.

(c) The Department and recipient may enter into an agreement to terminate the grant or loan at any time pursuant to terms which are consistent with this subchapter. The agreement shall establish the effective date of termination of the project and grant or loan, basis for settlement of grant or loan termination costs, and the amount and date of payment of any sums due either party. The Department has the right to determine the schedule for repayment by the recipient under a termination action.

(d) Upon termination, the recipient shall refund or credit to the State of New Jersey or the Department that portion or grant or loan funds paid to the recipient and allocable to the terminated project work. The recipient shall make no new commitments without the Department's approval.

1. The recipient shall reduce the amount of outstanding commitments insofar as possible and report to the director the uncommitted balance of funds awarded under the grant or loan. The Department shall make the final determination of the allowability of termination costs.

7:22-2.33 Rescission of grants or loans

(a) The Department may, in writing, rescind the grant or loan if it determines that:

1. Without good cause therefor, substantial performance of the project work has not occurred;

2. The grant or loan was obtained by fraud; or

3. Gross abuse or corrupt practices in the administration of the project have occurred.

(b) At least 10 days prior to the intended date of rescission, the Department shall give written notice to the recipient (certified mail, return receipt requested) of intent to rescind the grant or loan. The Department shall afford the recipient an opportunity for consultation prior to rescission of the grant or loan. Upon rescission of the grant or loan, the recipient shall return all grant or loan funds previously paid to the recipient. The Department shall make no further payments to the recipient. In addition, the Department retains the right to pursue such remedies as may be available under Federal, State and local law.

7:22-2.34 Administrative order of enforcement

(a) Under the authority of N.J.S.A. 58:10A-5d and N.J.S.A. 58:10A-6b, the Department may:

1. Issue an order to "cease and desist" unpermitted construction, pursuant to N.J.S.A. 58:10A-10b;

2. Issue an order revoking the permit to operate, pursuant to N.J.S.A. 58:10A-106 and N.J.A.C. 7:14-2.7;

3. Issue an order to "cease and desist" combined with an assessment of a civil administrative penalty, pursuant to N.J.A.C. 7:14-8.

7:22-2.35 Administrative hearings

(a) The Director shall attempt to resolve all disputes arising under a grant or loan. When a recipient so requests, the Division shall reduce a resolution to writing and mail or otherwise furnish a copy thereof to the recipient.

(b) A recipient may request a hearing within 15 days of a decision by the Director. If the matter is determined by the Department to be a contested case, the Department shall either hear the matter itself or transmit the matter to the Office of Administrative Law for a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. MINIMUM STANDARDS OF CONDUCT FOR OFFICERS, EMPLOYEES, AGENTS AND MEMBERS OF WASTEWATER UTILITIES

7:22-5.1 Scope and purpose

This subchapter establishes the minimum standards of conduct for persons participating in any State or Federal wastewater treatment facility construction grant or loan program.

7:22-5.2 Definitions

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

"Agent" means any person hired to act for the Authority in the conduct of its business.

"Associated party" means any employee, officer, agent, or members of Authority.

"Authority" means the public body or utility created pursuant to New Jersey law under which the Authority was created, to treat sewage within the identified territorial boundaries of the service area.

"Employee" means any individual employed on a regular basis by the Authority.

"Governing body" means the governmental unit(s) having the statutory authority and responsibility for the establishment of the Authority and/or the appointment of its members.

"Members" means those individuals appointed by the governing body to the Authority. The powers of the Authority are vested in these individuals.

"Officers" means those individuals selected by the members to serve in official capacities, such as chairman, vice-chairman, secretary or treasurer. In some organizations, some full-time employees may be considered officers; for example, the executive director or chief engineer.

"Person" means any individual, association, partnership or corporation.

"Responsible associated party" means any associated party who by reason of the individuals position has, directly or indirectly through subordinates, the authority and responsibility for initiating, reviewing, approving, or disapproving policy, financial, personnel, or procurement actions of the Authority.

"Supervisor" means any employee responsible for planning, directing, or supervising the work of others in accomplishing the administration, construction, or operation and maintenance activities of the Authority, including, but not limited to:

1. Any individual serving in the capacity of executive director, chief engineer, and/or chief administrative officer, and members of their executive staffs; and

2. Any employee responsible for key administrative functions such as personnel, procurement, finance and accounting.

7:22-5.3 Public accountability

(a) Each responsible associated party shall establish controls to safeguard the use of public funds and assure that such funds are not diverted to anyone's personal use.

(b) Each responsible associated party shall act to assure that qualified individuals are employed to operate the facilities of the Authority in accordance with established personnel procedures and practices or otherwise mandated by law.

(c) Each responsible associated party shall avoid noncompetitive procurement practices which restrict or eliminate competition or otherwise restrain trade, except where such noncompetitive practice is specifically and publicly declared by the members to be in the best interest of the public with reasons set forth. They shall review procurement actions to determine whether services and materials are needed, to assure adherence to applicable State and local procurement laws and procedures, and to confirm the adequacy and acceptability of the materials and services provided before authorizing payment.

(d) No associated party shall directly or indirectly use, or allow the use of, real or personal property of any kind without proper authority. In addition, each individual has a positive duty to protect and conserve all property, including equipment, materials and supplies entrusted to the individual.

7:22-5.4 Disclosure

(a) All supervisors, officers and members of the Authority shall prepare annually on or before the required date of submission, a statement of financial interests. The statement of supervisors and officers shall be submitted to the members. The member's statement shall be submitted to the governing body. Each statement prepared by one of these individuals shall disclose at a minimum, the following:

1. All business interests held by the individual or others on the individual's account. Such interests would include ownership or partnership in a business, the holding of an office or directorship in a business, or the ownership of more than 10 percent of the stock of a corporation. No percentage of interest need be given.

2. All real property, other than the individual's personal residence, held directly or indirectly by the individual or others on the individual's account which is located within the area served by the Authority. No value of property need be identified.

3. Source contributing to annual income. No amounts need be given.

7:22-5.5 By other persons providing services

Any other persons providing professional services to the Authority shall be required to disclose in writing any business, financial or personal interests which might conflict in any way with the interests of the Authority, with regard to the services being rendered.

7:22-5.6 Conduct in office

(a) No associated party, other than agents, shall knowingly, themselves or by others on their account, be a party to a sale of materials, supplies, property or services to the Authority except for their own contract of personal employment.

(b) No associated party may solicit or accept any compensation from anyone other than the Authority for any service, advice, assistance or other matter relating to their official duties.

(c) No associated party may be employed or act in any other capacity which would involve the acceptance of a fee, compensation or gift which could reasonably result in a conflict of interest or interfere with the efficient performance of the person's duties.

(d) No associated party shall, directly or indirectly by other persons, use information, which comes to the individual as part of their duties, in any manner for personal or pecuniary gain; nor shall any such person violate any confidentiality with regard to such information.

7:22-5.7 Representations

(a) No associated party shall, directly or indirectly by others, appear before or negotiate with the Authority on behalf of any other person in connection with the following:

1. The acquisition or sale of any interest in real or personal property by the Authority.

2. Any cause, proceeding, application or other matter before the Authority.

(b) Subsequent to employment, no associated party shall, directly or indirectly by others, act as attorney, agent or representative for anyone other than the Authority, in connection with any proceeding, application, contract, claim or other particular matter in which the individual participated personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, during this period of employment.

7:22-5.8 Gifts and gratuities

(a) No associated party shall solicit or accept, whether directly or indirectly or through their spouse or any member of their family, any compensation, gift, favor, or service of value which they know or should know is offered or obtained to influence them in the performance of their public duties and responsibilities. The acceptance of (infrequent) business meals (of nominal value) does not fall in such a category.

(b) Any gift or gratuity, prohibited by (a) above, received by any associated party form any person or firm should immediately be returned. The associated party shall promptly report the receipt of such gift to the members of the Authority. If the gift is perishable or for some reason cannot be returned, it shall be turned over to a charitable or public institution. In such instances, the associated party should notify the donor in writing that they are not permitted to accept such gifts and has contributed the gift to a charitable institution. A copy of this notification shall be provided to the Authority.

7:22-5.9 Administration of code of conduct

(a) Rules on the review of allegations of misconduct are as follows:

1. Persons desiring to make complaints concerning violations of the code of conduct or other misconduct should be requested to make such allegations in writing, to present information or evidence in support of their allegations and be available to meet representatives of the Authority in person.

2. All allegations of violations or misconduct on the part of employees, officers or agents shall be referred to the members. Allegations of misconduct of members shall be referred to the governing body which appointed that member. All investigations and proceedings related to resolution of the alleged misconduct shall be handled on a confidential basis.

3. Upon receiving such complaints, the members or governing body shall initially review the apparent merits of the allegations. Where the complaint is deemed completely frivolous and without merit, no further action need be taken. If however the allegation may have merit, the members or governing body shall initiate an investigation to gather facts and evidence upon which to base a conclusion as to the validity of the allegations made.

4. Upon completing its investigation, the members or governing body shall prepare a written report containing its findings and conclusions. This report shall provide the basis for the members or governing body to take appropriate action with respect to the allegations. The members shall have the responsibility for judging any allegations related to misconduct by its employees, officers, and agents. Allegations of misconduct on the part of a member shall be handled by the governing body in the manner set forth in law.

5. In instances where the allegations have been substantiated and a violation of State or local law may have had occurred, copies of the report shall be provided to the applicable county prosecutor or to the Attorney General. In instances where substantiated allegations involve a State or Federal grant or loan project, copies of the report shall be provided to responsible officials of the applicable Federal or State agencies.

(b) Whenever an associated party is found to have violated these ethical standards, the members or governing body shall take appropriate disciplinary action. Such action may range from a letter of reprimand, to the discharge of involved employees, officers, agents. Where misconduct resulted in increased costs to the Authority, it shall take appropriate action to terminate any related contract or purchase order and initiate appropriate litigation to recover such moneys.

7:22-5.10 Effective date of code of conduct

Upon promulgation, this code of conduct shall apply immediately to all actions of existing and future associated parties.

DIVISION OF WASTE MANAGEMENT

(a)

Closure and Post-Closure of Sanitary Landfills

Proposed Amendments: N.J.A.C. 7:26-2.9.

Authority: N.J.S.A. 13:1E-6, 13:1E-9 and 13:1E-114.
DEP Docket No. 001-86-01.
Proposal Number: PRN 1986-9.

Submit comments by March 5, 1986 to:
Howard Geduldig
Department of Environmental Protection
Office of Regulatory Services, Room 803
Labor and Industry Building
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.S.A. 13:1E-109 requires the owner or operator of every sanitary landfill facility to deposit, on a monthly basis in an interest-bearing account with an accredited financial institution, an amount equal to $0.30 per cubic yard of solids and $0.004 per gallon of liquids for all solid waste accepted for disposal during the preceding month at that sanitary landfill facility. N.J.A.C. 7:26-2.9(g)19 imposes upon the owner or operator of every sanitary landfill the duty of having the financial institution, wherein the funds are to be deposited, send a monthly statement of the escrow account to the department. N.J.A.C. 7:26-2.9(g)21 imposes upon the owner or operator of every sanitary landfill the duty of filing with the department a statement disclosing amounts of solid waste received, transfers into and out of the closure escrow account, interest accrued therein, and closure escrow account balance. The department proposes to waive these filing requirements for closure escrow accounts with balances under $25,000.00, upon

petition of the owner or operator, where the department finds that such filing requirements are unnecessarily burdensome on the financial institution, with respect to N.J.A.C. 7:26-2.9(g)19, or on the owner or operator with respect to N.J.A.C. 7:26-2.9(g)21.

N.J.A.C. 7:26-2.9(d) requires the owner or operator of every sanitary landfill facility to file a Closure and Post-Closure Financial Plan to guarantee proper closure of the facility. N.J.A.C. 7:26-2.9(f)4 requires that the financial plan take into consideration the effects of inflation on closure and post-closure expenses, unless otherwise approved by the department, by using an adjusted inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its "Survey of Current Business."

The department proposes to change the method for addressing the effects of inflation on closure and post-closure expenses from the use of a one-year adjusted inflation factor derived by dividing the latest published annual Implicit Price Deflator by the previous year's Deflator to the use of a calculated adjusted inflation factor. This calculated adjusted inflation factor shall be derived from the ten-year average inflation rate for the most current ten-year period of Gross National Product Implicit Price Deflators in order to moderate the effects of any single year's potentially anomalous inflation rate on the following year's adjusted inflation factor.

Social Impact

The proposed reporting changes are mostly procedural and are being made to improve the efficient and equitable administration of the program. As such the amendments are unlikely to have any adverse social impact on either State agencies or the sanitary landfill facility owner or operator. However, it is anticipated that administration of the program will be enhanced and that the reporting requirements will impose the least burden necessary for the efficient and effective monitoring of the program.

Proposed changes to the determination of inflation for purposes of developing the financial plan will result in the plan's more accurately reflecting the effects of long-term inflation on closure and post-closure expenses.

Economic Impact

There will be minimal economic impact resulting from these changes. The overall reduction in administrative costs experienced by the State will be minimal because the administration of the program will remain basically unchanged. These changes will provide cost relief for the owners or operators of some relatively small or inoperative landfills. These changes will also improve the economic prediction of landfill closure and post-closure costs by giving adequate consideration to inflation.

While the calculated adjusted inflation factor derived from a ten-year average may be larger than that of one derived from the single most recent year, and therefore require more in alternate funds to meet the dictates of an approved closure financial plan, it is equally probable that this ten-year average would be smaller, and therefore require less in alternate funds.

Environmental Impact

It is not anticipated that there will be any sufficient environmental impacts resulting from these proposed changes.

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

7:26-2.9 Closure and post-closure care of sanitary landfills

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

(f) The closure and post-closure financial plan shall meet the following specific requirements.

1.-3. (No change.)

4. The Financial Plan shall take into consideration the effect of inflation on closure and post-closure expenses. Unless otherwise approved, the owner or operator shall calculate the latest closure cost estimate using [an] **a calculated** adjusted inflation factor derived from the annual Implicit Price Deflator for the Gross National Product as published by the U.S. Department of Commerce in its "Survey of Current Business." The adjusted inflation factor shall be [calculated by dividing the latest published annual Deflator for the previous year.] **the 10-year moving average inflation rate (average annual percentage change) for the most current 10-year period of Gross National Product Implicit Price Deflators, for example; 1974 compared with 1984 or 116.50 compared with 223.43 which yields a 6.73 percent average annual percentage change.** The **adjusted annual** closure cost estimate shall equal the latest closure cost estimate times the adjusted average inflation factor.

5. (No change.)

(g) Pursuant to N.J.S.A. 13:1E-100[,] et seq., the requirements for the escrow account are as follows:

1.-18. (No change.)

19. The owner or operator of every sanitary landfill must arrange, with the financial institution wherein the funds are to be deposited, for a monthly statement of the escrow account to be sent to Landfill Closure Escrow Account, [the] Office of Special Funds Administration, Department of Environmental Protection, CN 402, [88] **428** East State Street, Trenton, New Jersey 08625[.]; **provided, however, the Department may, at its discretion, upon written petition from the owner/operator, waive the requirement for the monthly statement of the escrow account if it determines that reporting on an account of less than $25,000.00 would impose an unnecessary burden on the financial institution;**

20. (No change.)

21. The owner or operator of every sanitary landfill facility shall file, on or before the 20th of every month, with the Office of Special Funds Administration, Landfill Closure Escrow Accounts, Department of Environmental Protection, CN 402, [88] **428** East State Street, Trenton, New Jersey 08625, a statement showing the exact amounts of all solid waste accepted for disposal during the preceding month, the total amounts of solid waste received calendar year-to-date, the funds deposited in and withdrawn from the escrow account for the paticular sanitary landfill during the current month, interest accrued, escrow account balance, and the total calendar year-to-date funds deposited in and withdrawn from the escrow account. These statements shall be filed on forms provided by the Department[.]; **provided, however, the Department may, at its discretion, upon written petition from the owner or operator, waive the requirement for monthly reports, if it determines that the monthly statement on an account of less than $25,000.00 would impose an unnecessary burden on the owner or operator.**

(a)

Hazardous Waste Management

Proposed Amendments: N.J.A.C. 7:26-8.1, 8.2, 9.3, 9.7, 12.2.
Proposed New Rule: N.J.A.C. 7:28-8.19.

Public Notice

Take notice that the Department of Environmental Protection, Division of Waste Management, has extended the comment period for the proposed amendments to N.J.A.C. 7:26-8.1, 8.2, 9.3, 9.7, 12.2 and proposed new rules, N.J.A.C. 7:28-8.19, hazardous waste management regulations, as proposed in the December 16, 1985 issue of the New Jersey Register at 17 N.J.R. 2941(a), from January 16, 1986 to **February 17, 1986.**

Interested persons are invited to submit comments by February 17, 1986, to:

Ann Zeloof
New Jersey Department of Environmental Protection
CN 402
Trenton, NJ 08625

HEALTH

(b)

NARCOTIC AND DRUG ABUSE CONTROL

Controlled Dangerous Substances
Temporary Placement of Eight Designed Drugs into Schedule I

Proposed Amendment: 8:65-10.1

Authorized By: Joseph I. Morris, Acting Commissioner, Department of Health.
Authority: N.J.S.A. 24:21-3.
Proposal Number: PRN 1986-1.

Submit comments by March 5, 1986 to:

Lucius A. Bowser, RP, MPH
Chief, Drug Control Program
CN 362
Trenton, NJ 08625
609-984-1308

The agency proposal follows:

Summary

The Department of Health proposes to amend the Schedules of the Controlled Dangerous Substances Act to add six new chemical entitles to Schedule I because they are now classified as "Designed Drugs." These substances are analogs of existing controlled dangerous substances but whose chemical structure makes them non-controlled, and which substances pose an imminent hazard to public safety. The proposed amendment will bring the State regulations into conformity with Federal regulations. These six substances, (1) acetyl-alpha-methylfentanyl, (2) alpha-methylthiofentanyl, (3) benzylfentanyl, (4) beta-hydroxyfentanyl, (5) beta-hydroxy-3-methylfentanyl, (6) 3-methylthiofentanyl, (7) thenylfentanyl and (8) thiofentanyl, are a series of analogs of the Schedule II narcotic analgesic fentanyl.

These substances were placed into Schedule I by the Drug Enforcement Administration, U.S. Department of Justice in the Federal Register, cited as 50 F.R. 43698, dated October 29, 1985 and became effective November 29, 1985.

These substances are clandestinely produced primarily in California and known as "China White"; and "Synthetic Heroin". Acetyl-alpha-methylfentanyl has a potency of ten times that of morphine. Alpha-methylthiofentanyl has a potency of 450 to 600 times that of morphine. Benzyl-fentanyl has a potency of one tenth of morphine but has caused 24 deaths during the period of January 1982 to June 1985. Beta-hydroxyfentanyl has a potency of 150 times that of morphine. Beta-hydro-3-methylfentanyl has a potency of 300 to 1500 times that of morphine. 3-methylthiofentanyl has a potency of 1000 times that of morphine. Thenylfentanyl was found in a clandestine laboratory in Louisiana and California and it is not known if it was an impurity or by-product but its similarity to fentanyl would make it likely to have morphine-like activity. Thiofentanyl has a potency of 175 times that of morphine. All of these fentanyl analogs have been associated with at least 60 deaths since January 1984.

There is no acceptable medical use of these analogs of fentanyl but they pose a serious threat to the health and welfare of the public that they require immediate scheduling to prevent their abuse.

Social Impact

The controlling of these eight substances having no known medical use in the United States would have a great social impact in that it would control the illicit production and distribution of these extremely potent analogs of fentanyl, a Schedule II narcotic analgesic. These controls would lower the incidences of hospitalization and overdose deaths from the injection or injestion of these potent substances. There would be no social impact on practitioners or pharamcies as these substances are not commercially available for use in modern medicine.

Economic Impact

Preventing the production or distribution of these eight potent substances would have a great economic impact on the public and hospitals. It would be in the best interest of the public health and safety to control these substances. There would be no economic impact on practitioners or pharmacies as this amendment would make these substances Schedule I substances which may not be prescribed, dispensed, or administered.

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

8:65-10.1 Controlled dangerous substances; Schedule I

(a) (No change.)

(b) The following is Schedule I listing of the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substances code number.

1.-6. (No change.)

7. Temporary listing of substances subject to emergency scheduling. Any material, compound, mixture, or preparation which contains any quantity of the following substances:

i. (No change.)

ii. (See proposal at 17 N.J.R. 2214(a).)

iii, and iv. (See proposed at 17 N.J.R. 2950(a).)

v. acetyl-alpha-methylfentanyl (N-(1-(1-methyl-2-phenyl) ethyl-4-piperidyl)-N-phenylacetamide), its optical isomers, salts, and salts of isomers . . . 9615;

vi. alpha-methylthiofentanyl (N-(1-(1-methyl-2-(2-thienyl)ethyl-4-piperidyl)-N-phenylpropanamide), its optical isomers, salts, and salts of isomers . . . 9832;

vii. benzylfentanyl (N-(1-benzyl-4-piperidyl)-N-phenyl-propanamide), its optical isomers, salts, and salts of isomers . . . 9818;

viii. beta-hydroxyfentanyl (N-(1-(2-hydroxy-2-phenyl) ethyl-4-piperidyl)-N-phenylpropanamide), its isomers, salts, and salts of isomers . . . 9830;

ix. beta-hydroxy-3-methylfentanyl (N-(3-methyl-1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl)-N-phenylpropanamide), its isomers, salts, and salts of isomers . . . 9831;

x. 3-methylthiofentanyl (N-(3-methyl-1-(2-(2-thienyl)ethyl-4-piperidyl)-N-phenylpropanamide, its isomers, salts, and salts of isomers . . . 9833;

xi. thenylfentanyl (N-(1-(2-(2-thienyl)methyl-4-piperidyl)-N-phenylpropanamide, its isomers, salts, and salts of isomers . . . 9834;

xii. thiofentanyl (N-(1-(2-(2-thienyl)ethyl-4-piperidyl)-N-phenyl-propanamide, its isomers, salts, and salts of isomers . . . 9835.

HUMAN SERVICES

The following proposals are authorized by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

(a)

Pharmaceutical Services Manual Appendices B, D, E

Proposed Amendment: N.J.A.C. 10:51-1, Appendices B, D and E

Authority: N.J.S.A. 30:4D-6b(6), 7 and 7b; 30:4D-22, 24.

Proposal Number: PRN 1986-3.

Submit comments by March 5, 1986 to:

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

The agency proposal follows:

Summary

The Division of Medical Assistance and Health Services is updating and revising Appendices B, D and E of the Pharmaceutical Services Manual. Appendix B is the list of non-legend (over-the-counter) drugs for which Medicaid will reimburse pharmaceutical providers. Appendix D is a list of legend devices, which are covered by both the Medicaid and PAAD (Pharmaceutical Assistance to the Aged and Disabled) programs. Appendix E is a list of protein replacements.

In general, the primary reasons for the additions to the respective appendices include new products, reformulations, and reclassification from legend (prescription) to non-legend (over-the-counter) status. The main reasons for deletions include changes in the formula, the manufacturer discontinues production, and very infrequent usage.

Social Impact

The issuance of this updated list will insure both Medicaid recipients and PAAD beneficiaries will be able to receive up-to-date pharmaceuticals, and that providers will be reimbursed for dispensing them.

Economic Impact

There is no change in the Division's reimbursement procedures, so there should be virtually no economic impact on both the Medicaid and PAAD programs.

Pharmaceutical providers will continue to be reimbursed in accordance with Medicaid policies, procedures, and fee schedules, so long as they use the updated listing.

There is no cost to the Medicaid patient. PAAD beneficiaries will continue to pay a $2.00 co-payment as required by law (N.J.S.A. 30:4D-22).

Copies of the full text of N.J.A.C. 10:51-1 Appendix B, which is not reproduced below, may be obtained from or made available for review by contacting:

Henry W. Hardy, Esq.
Division of Medical Assistance and Health Services
Quakerbridge Plaza, Bldg. No. 7
Quakerbridge Road, CN-712
Trenton, NJ 08625

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

APPENDIX B
General Non-Legend Drugs

The following are additions to the Non-Legend Drug List:

PRODUCT	SIZE	R.U.	NDC	PAGE
Actifed Capsules	20	Cap	0000081-0020-20	18
Dia-Quel Liquid	120cc	CC	0000088-2011-11	23
Dimetapp Elixir	120cc	CC	0000031-2230-12	24
Dimetapp Extentabs	100	Tab	0000031-2271-63	24
Dimetapp Tablets	24	Tab	0000031-2254-54	24
Maalox Therapeutic Conc	48	Tab	0000067-0344-48	29
Neosporin Cream	15gm	Each	0000081-0737-94	31
Polysporin Powder	10gm	Each	0000081-0793-99	34
Polysporin Spray	90gm	Each	0000081-0792-05	34
Sterile Sod Chlor Sol 0.45%	3cc	cc	0049502-0020-03	36
Sterile Sod Chlor Sol	5cc	cc	0049502-0020-05	36
Sterile Sod Chlor Sol	10cc	cc	0049502-0020-10	36
Sterile Sod Chlor Sol 0.9%	3cc	cc	0049502-0030-03	36
Sterile Sod Chlor Sol	5cc	cc	0049502-0030-05	36
Sterile Sod Chlor Sol	10cc	cc	0049502-0030-10	36
Sterile Sod Chlor Sol 3.0%	10cc	cc	0049502-0040-10	36
Sterile Sod Chlor Sol	10cc	cc	0049502-0041-10	36

DIABETIC TESTING MATERIAL

Ames Dextro System Lancet	**100**	**EACH**	**0000193-5574-21**	44
Autoclix Lancet Device		**EACH**	**0050924-0507-01**	44
Autoclix Lancets	**100**	**EACH**	**0050924-0509-10**	44
Autolet Kit		**EACH**	**0000193-2790-01**	44
Autolet Platforms (Regular)	**200**	**EACH**	**0000193-2791-27**	44
Autolet Platforms (Super)	**200**	**EACH**	**0000193-2797-27**	44
B-D Autolance Device		**EACH**	**0000293-5771-01**	44
B-D Micro-Fine Lancets	**100**	**EACH**	**0000293-5771-01**	44
Chemstrip UGK	**50**	**EACH**	**0050924-0514-50**	44
Chemstrip UGK	**100**	**EACH**	**0050924-0513-10**	44
Monojector Lancet Device		**EACH**	**0008881-6021-17**	44
Monolet Blood Lancets	**200**	**EACH**	**0008881-6020-18**	44

The following are changes to the Non-Legend Drug List:

PRODUCT	Formerly:	Change to:	Page
Alcon-Efrin-12 drops	[0000991-0101-30]	**0000998-0101-30**	18
Alcon-Efrin 25 drops	[0000991-0102-30]	**0000998-0102-30**	18
Alcon-Efrin 25 Sprays	[0000991-0112-30]	**0000998-0112-30**	18
Alcon-Efrin 50 Drops	[0000991-0103-30]	**0000998-0103-30**	18
Aquasol-A Drops	[0000053-4200-30]	**0000053-4210-30**	19
Beminal-500 tablets	[0000046-0832-81]	**0000046-0830-81**	20
Co-Tylenol Liquid	[0000045-0173-04]	**0000045-0189-04**	22
E.T. Chewable Vitamins	[0000003-1834-30]	**0000003-0183-40**	24
E.T. Chewable W/Iron Vits	[0000003-1824-30]	**0000003-0182-40**	24
Sudafed Cough Syrup	[0000081-0872-82]	**0000081-0875-82**	37
Tussar-SF Syrup 120cc	[0000075-3635-01]	**0000075-3635-05**	38
Tylenol Drops	[0000045-0502-21]	**0000045-0186-15**	39
Tylenol Exixir	[0000045-0465-04]	**0000045-0187-04**	39
Ultra Tears Ophth Sol	[0000065-0412-15]	**0000098-0412-15**	39

Insulin Preparations:

PRODUCT	Formerly	Change to:	Page
Actrapid Insulin U-100	[0011791-0403-01]	**0000003-2440-10**	43
Lentard Insulin U-100	[0011791-0433-01]	**0000003-2443-10**	43
Monotard Insulin U-100	[0011791-0423-01]	**0000003-2442-10**	43
Semitard Insulin U-100	[0011791-0413-01]	**0000003-2441-10**	43
Ultratard Insulin U-100	[0011791-0453-01]	**0000003-2445-10**	43

The following are name changes to the Non-legend Drug List:

PRODUCT	NDC	Page
[Actrapid Human Reg U-100]	[0000003-1830-10]	43
Novolin Human Reg U-100	**0000003-1833-10**	43
[Monotard Human Lente U-100]	[0000003-1831-10]	43
Novolin Human Lente U-100	**0000003-1835-10**	43

The following are formula changes to the Non-Legend Drug List:

PRODUCT	Size	R.U.	NDC	Page
[Cama Inlay-Tabs]			[0000043-0057-51]	21
Cama Arthritis Pain Reliever	100	TAB	**0000043-0104-51**	21
[Coricidin Demilet]			[0000085-0540-06]	22
Coricidin Demilets	36	TAB	**0000085-0075-05**	22
[Coricidin Tabs]			[0000085-0171-05]	
Coricidin Tabs	100	TAB	**0000085-0522-04**	22
[Coricidin-D Tabs]			[0000085-0871-05]	22
Coricidin-D Tabs	100	TAB	**0000085-0307-04**	22
[Dorcol Syrup]			[0000043-0527-04]	24
Dorcol Childrens Cough Syrup	120cc	cc	**0000043-0537-14**	24
[Theragran-M Tabs]			[0000003-0825-54]	37
Theragran-M Tabs	100	TAB	**0000003-0150-50**	37

The Following are corrections to the Non-Legend Drug List:

PRODUCT	Formerly:	Change to:	Page
Basaljel Swallow Tabs	[0000008-0743-01]	**0000008-0473-01**	20
Diaphragm-All Flex Kit	[Diaphrgam]	**Diaphragm**	48
Dical-D W/Vit C Capsules	[0000074-3587-05]	**0000074-3587-04**	23
Two/G-DM Liquid	[0000086-1036-04]	**0000068-1036-04**	39

The following are products to be deleted from the Non-Legend Drug List:

PRODUCT	Size	R.U.	NDC	Page
[Amesec Pulv	100	CAPS	0000173-0335-23]	19
[Amodrine Tabs	100	TAB	0000025-1291-31]	19
[Neomycin Top Oint/Lilly	15gm	EACH	0000002-1821-47]	31
[SK-AP AP Exlixir	120cc	cc	0000007-0175-44]	36
[Surfacacine Jelly	30gm	EACH	0000002-2458-67]	37
[Vit. E Caps 100 iu/Squibb	100	CAP	0000003-0889-50]	41
[Vit. E Caps 100 iu/Squibb Nat	100	TAB	0000003-0352-50]	41
Insulin Preparations				
[Insulin Squibb Beef Lente U-100	Any Size	cc	0000003-2703-10]	43
[Insulin Squibb Beef NPH U-100	Any Size	cc	0000003-2702-10]	43
[Insulin Squibb Pork Reg U-100	Any Size	cc	0000003-2701-10]	43
[Insulin Squibb Prot Zinc U-100	Any Size	cc	0000003-3542-15]	43
Contraceptive Materials				
[Ramses Jelly Refill	85gm	EACH	0000234-0003-02]	42
Diabetic Testing Material				
[Glucola 300cc		EACH	0000193-2607-10]	44

APPENDIX D
Legend Devices

The following products are to be deleted from the Legend Devices List:

PRODUCT	R.U.	NDC	Page
[Diaphragm-Ramses Any Size Pkg	EACH	0000234-0602-01]	48
[Healon Inj/Disp Syringe	EACH	0000016-0311-12]	48

The following product is to be added to the Legend Devices List:

Inspirease Drug Delivery System	**EACH**	**0000369-4602-0148**

APPENDIX E
Protein Replacements and Other Special Items

The following are to be deleted from the Appendix E List:

PRODUCT	R.U.	NDC	Page
[Cho-Free Conc. 14oz	EACH	0000033-2391-14]	49
[Compleat-B R.T.U. 13.6oz	EACH	0000212-0200-50]	49
[Enfamil Concentr. Liq. 13oz	EACH	0000087-0300-01]	49
[Enfamil Nursette 4oz	EACH	0000087-0280-01]	49
[Enfamil Nursette 6oz	EACH	0000087-0280-15]	49
[Enfamil Nursette 8oz	EACH	0000087-0280-26]	49
[Enfamil Nursette-Plastic 8oz	EACH	0000087-0284-01]	49
[Enfamil Powder 1 lb	EACH	0000087-0330-01]	49
[Enfamil R.T.U.* 8oz	EACH	0000087-0302-24]	49
[Enfamil R.T.U.* 32oz	EACH	0000087-0302-22]	49
[Enfamil W/Iron Concentr. 13oz	EACH	0000087-0301-01]	49
[Enfamil W/Iron Nursette 6oz	EACH	0000087-0315-01]	49
[Enfamil W/Iron Powder 1 lb	EACH	0000087-0331-01]	49
[Enfamil W/Iron R.T.U.* 8oz	EACH	0000087-0305-02]	49
[Enfamil W/Iron R.T.U.* 32oz	EACH	0000087-0305-01]	49
[Nutri-1000 10oz	EACH	0000161-0560-00]	50
[Nutri-1000 32oz	EACH	0000161-0560-11]	50
[Similac Concentr.—Can 13oz	EACH	0000074-0264-01]	50
[Similac R.T.U.*—Can 8oz	EACH	0000074-0177-01]	50
[Similac R.T.U.*—Can 32oz	EACH	0000074-0232-01]	50
[Similac Nursette 4oz	EACH	0000074-0480-01]	50
[Similac Nursette 8oz	EACH	0000074-0880-01]	50
[Similac Powder 1 lb	EACH	0000074-0139-01]	50

[Similac Advance Conc. 13oz	EACH	0000074-3313-01]	50
[Similac Advance Conc. 32oz	EACH	0000074-3301-01]	50
[SMA Liquid Conc. 13oz	EACH	0000008-0447-02]	50
[SMA Powder 1 lb	EACH	0000008-0448-02]	50
[SMA R.T.U.* 8oz	EACH	0000008-0449-11]	50
[SMA R.T.U.* 32oz	EACH	0000008-0449-02]	50
[Sustacal Pudding 5oz all Flavors	EACH	0000087-0415-41]	50

(a)

Long Term Care Services Manual Cost Study, Rate Review Guidelines and Reporting System-Peer Grouping

Proposed Amendment: N.J.A.C 10:63-3.2, 3.4, 3.5, 3.6, 3.8, 3.10 through 3.15, 3.17, 3.18, 3.19

Authority: N.J.S.A. 30:4D-6a(4)(a), b(14), 7, 7a, 7b.

Proposal Number: PRN 1986-4.

Submit comments and inquiries by March 5, 1986 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN-712
Trenton, NJ 08625

Any comments submitted may be reviewed at the above address.

A copy of the proposed changes are available for public review at the 16 Medicaid District Offices and the 21 County Boards of Social Services.

The agency proposal follows:

Summary

This proposal will amend the Cost Accounting and Rate Evaluation System, known as the "CARE Guidelines", which are utilized to determine reimbursement rates for Medicaid patients in long term care facilities (LCTFs). "Peer Grouping" will establish revised screens for LTCFs that are classified as governmental facilities. Screens are utilized in the CARE system to establish the reasonableness of costs. Those costs that are deemed unreasonable, i.e., in excess of the screens, are not reimbursed by the Medicaid program. Revised screens will be established in certain rate components, such as raw food costs, general service expenses, property-operating costs, patient care expenses, and property-capital costs. The establishment of these screens for governmental LTCFs would more accurately reflect their reasonable operating costs.

The new governmental rates developed under this proposal will be compared to the rates established for governmental facilities under the current CARE system. The new rates will be used for federal claiming purposes while the state share will be based on the present methodology.

This proposal is being submitted in anticipation of the passage of New Jersey Assembly Bill 3811.

Social Impact

This proposal will impact primarily on governmental LTCFs. This modification of the CARE system should enable these LTCFs to continue to provide care and services to Medicaid patients who require nursing level care. The claiming of additional federal dollars should make additional funds available for counties to provide expanded home-based care services.

Economic Impact

The expected additional reimbursement to be received by governmental LTCFs will be approximately 24.75 million federal dollars. State expenditures will not be increased as a result of this proposal except as provided in the normal rate-setting methodology. State reimbursement shall be no greater than the per diem rate calculated under the existing CARE system. Local funding from the counties will be used to claim additional federal financial participation. A portion of the additional federal dollars will be used by the counties to provide expanded home-based care services.

Medicaid patients are required to contribute from their available income towards the cost of their care in an LTCF. This requirement has always been part of the New Jersey Medicaid Program.

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

10:63-3.2 Rate components

(a) The prospective rates will be "screened" **CFA** rates per day calculated by applying standards and reasonableness criteria ("screens") [to the following five rate components as identified on reporting Schedule A] **for two classes of LTCFs:**

1. Class I Proprietary and Voluntary LTCFs;

2. Class II Governmental LTCFs;

i. To qualify as a Class II Governmental LTCF, the LTCF must meet all of the contractual requirements of the Division of Medical Assistance and Health Services and be a governmental operation.

(b) The "screens" will be applied to the following five rate components as identified on reporting Schedule A:

1. Raw Food Costs;
2. General Service Expenses;
3. Property-Operating Costs;
4. Patient Care Expenses;
5. Property-Capital Costs (including return on investment).

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

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

1. (No change.)

i. (No change.)

(1) (No change.)

(2) Which has an equity interest of 10 percent or more in any business entity which is related by the definition in [(c)] (**d**)1i(1) above or which has an equity interest of 10 percent or more in any business entity related by [(c)] (**d**)i(2) of this section; or

(3) (No change.)

ii. (No change.)

(1) (No change.)

(2) Who has a beneficial interest of 10 percent or more in an entity related by [(c)] (**d**)1i(2) or (3) above; or

(3) Who is a relative of an individual who is related by [the] definition [in (c)] (**d**)1ii(1) or (2) above;

(4) [Whose] **B**[b]eneficial interest is cumulative, if it relates to spouse, parent or children.

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

10:63-3.4 Raw food costs

(a) (No change.)

1. Governmental LTCFs which provide their own food service and which had over 20 percent Medicaid patient days in the base period will be ranked separately and the reasonableness limit will be set at 120 percent of their median cost per day.

(b) (No change.)

(c) For LTCFs above [that] **this** limit, **the excess of** actual raw food costs will be added to other general service expenses and subjected to a screen of the combined total as **described in N.J.A.C. 10:63-3.5.** Accordingly, a credit may be **applied to excess raw food costs** [entered] if non-food general service costs are below the reasonable limit [where an excess raw food cost is indicated]. Any such credit is limited to **the** amount of raw food cost excess.

10:63-3.5 General service expenses

(a) For purposes of [—] of screening reported base period costs, the general services category will be segregated into the following cost components:

1.-4. (No change.)

[Note]**i.** Reasonableness limits will be developed for each of these components of cost. Reimbursement rates will include the lower of actual costs or reasonable limits developed for each component. No trade-offs among cost components will be allowed with the exception of raw food **(see N.J.A.C. 10:63-3.4).**

(b) (No change.)

1. (No change.)

2. Administrator: Reasonable compensation of unrelated administrators as determined by the regression analysis formula utilized by the [Division of Health Economics Services] **Department of Health, Division of Facilities Rate Setting.**

i.-iv. (No change.)

3.-4. (No change.)

5. Reasonableness limits for the other general services category will be established at:

i. 105 percent of median costs as reported by proprietary and voluntary facilities which had over 20 percent Medicaid patient days[.], **and**

ii. 105 percent of median costs as reported by governmental facilities which had over 20 percent Medicaid patient days.

6. The level of reasonableness for legal fees will be established at:

i. 250 percent of median costs of proprietary and voluntary facilities which had over 20 percent Medicaid patient days or that per diem value which recognized no greater than 80 percent of reporting proprietary and voluntary long term care facilities which had over 20 percent Medicaid days[.], **and**

ii. 250 percent of median reported costs of governmental facilities which had over 20 percent Medicaid patient days or that per diem value which recognizes no greater than 80 percent of reporting governmental long term care facilities which had over 20 percent Medicaid days.

7.-8. (No change.)

10:63-3.6 Property-operating expenses

(a) Property [-] operating expenses include property taxes and utilities.

1. (No change.)

2. For this purpose, reasonable plant square feet (and related property taxes) **for voluntary and proprietary LTCFs** will be determined as follows:

i. (No change.)

(1)-(2) (No change.)

(A) Reasonable plant square feet for governmental LTCFs will be determined separately as in N.J.A.C. 10:63(a)1. above.

ii. (No change.)

iii. The reasonableness limit for each LTCFs plant square feet will be established at 110 percent of the norm for its class and licensed beds. (See [Section 10 of this subchapter] **N.J.A.C. 10:63-3.10**) for LTCFs with residential or sheltered care patients.)

3. (No change.)

4. For LTCFs whose Department of Transportation (D.O.T.) appraised value per plant square foot is greater than 110 percent of the median construction costs at 1977 price levels, the property taxes attributable to the excess will be excluded from the rate base unless the owners can demonstrate unusual circumstances. For screening new LTCFs, this figure will be revised each year for inflation and for effects of standards changes upon construction cost. (See [section 10 of this subchapter] **N.J.A.C. 10:63-3.10** for the methodology for calculating this limit at 1977 price levels.)

5. (No change.)

i.-ii. (No change.)

iii. For this purpose, a city, town, and so forth is considered "urban" if its population exceeds 25,000 and its average population exceeds 7,000 per square mile. All other areas are considered "nonurban" **or "rural".**

6.-8. (No change.)

(b) (No change.)

(c) (No change.)

1. Base period utility costs per bed will be deemed apparently unreasonable to the extent that they exceed 150 percent of the Statewide median cost per bed **as determined for each class of LTCF indicated in N.J.A.C. 10:63-3.2.** [Where apparently unreasonable costs are identified by this criterion, the departments will discuss same with LTCF as to their reasonableness.]

i. The Department will upon request review any inequities which owners believe are brought about by unusual circumstances.

10:63-3.8 Routine **and special** patient care expenses

(a) (No change.)

(b) (No change.)

1. (No change.)

2. The percentage of hours paid for vacations, holidays, illness, and so forth (hours paid but not worked) to hours worked, will be ranked in descending order for all proprietary and voluntary LTCFs in the State. **A separate ranking will be developed for governmental LTCFs.** The percentage for the medical LTCF **for each class of facility** will be selected as the Statewide norm for the percentage of hours paid but not worked **for that class of facility.**

3.-4. (No change.)

i. The average equalized compensation rate for the median LTCF **for each class of LTCF** will be selected as the norm for the State.

ii. A separate calculation will be made for governmental facilities.

5. [This] **The** compensation rates **for each class of facility** will be multiplied by the paid hours developed in (b)3 above for each class of nurse and aggregated for all three classes. This total will be adjusted for timing differences to each LTCFs base period.

6. (No change.)

(c) Reasonableness limits for the below listed special patient care services other than nursing will be established for each class of LTCF.

1. Those items which are considered special patient care services are:
i. Medical Director;
ii. Patient activities;
iii. Pharmaceutical consultant;
iv. Non-legend drugs;
v. Medical supplies;
vi. Social services;
vii. Oxygen.

[(c)](**d**) Reasonableness limits for medical supplies and patient activities will be established at 150 percent of the median per diem cost [of all proprietary and voluntary] **for each class of** LTCF[s] which had over 20 percent Medicaid days in the base period.

[(d)](**e**) Reasonableness limits for **special** patient care services other than [nursing,] medical supplies and patient activities will be established at 110 percent of the median per diem cost [of all proprietary and voluntary] **for each class of** LTCF[s] which had over 20 percent Medicaid days in the base period.

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

10:63-3.9 Property-capital costs (**including Return on Investment (ROI)**

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

10:63-3.10 Buildings

(a) The CFA for buildings and fixed equipment will be based upon appraised 1977 replacement costs less wear and tear, subject to reasonableness limits as described in (c), (d) and (e) below.

(b) (No change.)

(c) Reasonableness limits on plant square feet will be set at 110 percent of the median [plan] **plant** square feet per available bed of all proprietary and voluntary LTCFs which had over 20 percent Medicaid patient days in the base period. **Separate reasonableness limits will be developed for governmental LTCFs by the same method.** LTCFs not substantially complying with current State and Federal space requirements or carrying space waivers will be excluded from this calculation.

(d) A reasonableness limit on appraised value per square foot will be established at 110 percent of the median appraised values, at 1977 price levels, of proprietary and voluntary LTCFs which had over 20 percent Medicaid days in the base period. **A separate reasonableness limit will be developed for governmental LTCFs by the same method.**

(e) The reasonable limits as described above will be combined to allow for square feet in excess of that established limit where value per square foot is less than that limit **for each class of long term care facility.**

(f)-(i) (No change.)

(j) For LTCFs with residential and/or sheltered care patients, data relative to common areas will be apportioned to nursing patients based upon base period licensed beds. After making such apportionments, appraised values will be subject to the reasonableness screens described in (c) [and] , (d) **and** (e) above and, where applicable, to the weighted average year of construction calculations described in [(h)] (i) above. This proration will not be redetermined for subsequent years in the absence of significant changes in facilities or in patient mix.

(k)-(p) (No change.)

10:63-3.11 Land

(a) (No change.)

1.-2. (No change.)

(b) The interest rate developed per N.J.A.C. 10:63-3.10(**f**) will be applied to the reasonable 1977 appraised value.

(c) (No change.)

(d) For LTCFs providing residential or sheltered care, reasonable appraised values for land will be prorated to nursing care patients based upon their proportion of base period total beds. This proportion will not be redetermined in the absence of significant changes in patient mix.

10:63-3.12 Moveable equipment

(a) (No change.)

(b) The allowance per licensed bed will be determined by applying to this median cost the interest rate developed per N.J.A.C. 10:63-3.10(**f**), (**l**), (**m**).

(c) (No change.)

10:63-3.13 Maintenance and replacements (**excluding motor vehicles**)

(a) (No change.)

1. Expenditures for this purpose in the base period [by voluntary and proprietary LTCFs with] **for each class of LTCF which had** over 20 percent Medicaid days in the base period will be adjusted to price levels at the midpoint of the base period through **the application of** the inflation factor to reported costs for fiscal years ending prior to December.

2. (No change.)

3. For the remaining LTCFs, maintenance and replacement costs per plant square foot at [1976] **base period** price levels will be calculated **for each class of LTCF.** Mathematical techniques will be used to determine a general formula describing the relationships between expenditures per plant square foot for maintenance and replacements and factors such as age of buildings, estimated building replacement costs, and so forth.

4. The 15 percent highest and 15 percent lowest extremes in actual expenditures compared with this general formula will then be removed from further calculations. The same mathematical techniques will then be applied to the remaining 70 percent of the data to develop the formula to be used to calculate a reasonable allowance **for each class of LTCF** for maintenance and replacement [for all LTCFs].

5. (No change.)

6. Each LTCFs maximum total allowance per reasonable plant square foot for any one year will be developed by applying this formula to its particular factors and incrementing the result by 10 percent. No allowance will be provided for plant square feet considered unreasonable per N.J.A.C. 10:63-3.6 (**a**)**1.-2.**

7. (No change.)

i. Actual expenditures that are below the limits for [1976 and future years,] **the base period,** may be carried and applied to excess expenditures in subsequent years. The following example illustrates how two typical LTCFs would be affected.

(No change in chart.)

8. (No change.)

10:63-3.14 Property insurance

(a) (No change.)

1. Base period property insurance costs per dollar of appraised value and per dollar of estimated 1977 replacement costs will be calculated for all voluntary and proprietary LTCFs. **A separate calculation will be made for governmental facilities.**

2. (No change.)

3. The procedures described in N.J.A.C. 10:63-3.13 **of the preceding section** will be used to eliminate extremes and to

develop the formula to be used to calculate the reasonableness limit for property insurance.

4. Each LTCFs reasonableness limit per reasonable plant square foot will be developed by applying this formula to its particular factors and incrementing the result by 10 percent. No allowance will be provided for plant square feet considered unreasonable per N.J.A.C. 10:63-3.6(**a**)**1.-2.**

10:63-3.15 Target occupancy levels

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

(d) If base period patient days exceed licensed bed days calculated per (a) above, then the [largest] **target** occupancy will be entered at 95 percent of actual base period patient days.

10:63-3.17 Adjustments to base period data

(a) (No change.)

1.-3. (No change.)

4. Where legal and management changes have been approved and the approved costs are not expended in the prospective rate period, the unspent amount will be recovered from the LTCF.

Renumber 4. as **5.** (No change.)

10:63-3.18 Inflation

(a) (No change.)

1. Average hourly earnings of manufacturing employees in New Jersey as published by the Bureau of Labor Statistics (weighted 60 percent);

2. (No change.)

(b) This inflation factor will be developed jointly by the Division of Medical Assistance and Health Services and the Department of Health, Division of Facilities Rate Setting.

Recodify (b) through (e) as (**c**) through (**f**) (No change in text.)

10:63-3.19 Working capital provision and total rates

(a) (No change.)

1.-2. (No change.)

i. (No change.)

ii. Multiplied by the Medicare return on equity rate for the twelve month period ending [on the previous] December, **1976;**

iii. (No change.)

3.-4. (No change.)

5. Rates will be limited to the certified lowest **semi-private** rate charged to private patients **as reported to the Division of Medical Assistance and Health Services.**

(a)

DIVISION OF PUBLIC WELFARE

Assistance Standards Handbook School Attendance, Establishing Monthly Earnings, Change in Need, Resources, Disregard of Earned Income in AFDC-C and -F segments, Irregular or Nonrecurring Income, Child Support Received by the Eligible Unit, Child Care, Emergency Assistance

Proposed Amendment: N.J.A.C. 10:82-1.8, 1.9, 2.14, 2.20, 3.1, 3.2, 4.4, 4.6, 4.15, 4.17, 5.3, and 5.10

Authority: N.J.S.A. 44:7-6 and 44:10-3; 45 CFR 224.20, 233.10, 233.20, 233.31, and 233.35.

Proposal Number: PRN 1985-744.

Submit comments by March 5, 1986 to:
Audrey Harris, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Most of the amendments contained in the following proposal are the result of a review conducted by the United States Department of Health and Human Services (USDHHS), Office of Family Assistance, to evaluate the conformity of rules at N.J.A.C. 10:82 to current Federal regulations. The remaining amendments provide for internal consistency and clarity within N.J.A.C. 10:82.

The proposed amendment at N.J.A.C. 10:82-1.8(a) includes a cross reference to N.J.A.C. 10:81-3.18(b)2ii(6). The purpose is to alert the county welfare agency (CWA) to a possible change in WIN program registration status due to hours of school attendance, in situations where the parent of an eligible child is a student attending school regularly and the eligible child is under the age of six (45 CFR 224.20(b)(8)).

N.J.A.C. 10:82-1.9 is amended to provide a cross reference to N.J.A.C. 10:81-3.13(a), which outlines age requirements for AFDC children. The amendment will clarify that the school attendance definitions apply to all children who meet the age requirements for AFDC eligibility as set forth in N.J.A.C. 10:81-3.13(a) and 45 CFR 233.10(b)(2)(ii)(a)(1).

Language is deleted at N.J.A.C. 10:82-2.14 concerning conversion of weekly or biweekly income to monthly amounts by conversion factors of 4.333 or 2.167, respectively. The rule will thereby conform to current monthly reporting regulations which require monthly income to be the actual income received by an individual in a month, in accordance with existing Federal regulations (45 CFR 233.31(b)(2)).

The proposed amendment at N.J.A.C. 10:82-2.20 clarifies the treatment of additional payments to an AFDC eligible unit which has experienced a change in circumstances while receiving assistance. The proposed rule provides that when an eligible unit reports to the CWA a change in circumstances, an adjustment in the assistance payment will be made subject to adequate notice if the change in circumstances was reported through the Monthly Status Report (MSR) form or timely and adequate notice if the change was reported by means other than the MSR. The rule stipulates that the adjustment must be effective for the payment month corresponding to the budget month in which the change in circumstances occurred.

Language has been added at N.J.A.C. 10:82-2.20 clarifying that additional payment(s) of assistance may be provided to an eligible unit only in situations of administrative error, emergency assistance or the addition of a new member to the eligible unit, in accordance with 45 CFR 233.35. New language clarifies that when an AFDC eligible unit experiences an unanticipated reduction or loss of income in or after a particular budget month but the assistance payment does not reflect this loss immediately due to retrospective budgeting, additional payments may not be issued, but the family may seek supplemental payments authorized under N.J.A.C. 10:82-5.11.

The rule change at N.J.A.C. 10:82-3.1 requires CWAs, when determining AFDC eligibility, to consider income and re-

sources on an equitable basis for both program applicants and recipients (45 CFR 233.20(a)(1)). Consequently, the rule is being amended to permit program applicants, as well as recipients, to set aside funds as savings, so long as such funds plus the value of other nonexempt resources do not exceed the $1,000 resource limit.

The revision at N.J.A.C. 10:82-3.2(b) clarifies that exempt resources include weekly allowances received as incentives through participation in Job Training Partnership Act (JTPA) programs and thereby replaces obsolete language concerning the CETA program. Exempt resources also include savings accumulated by the applicant or recipient AFDC family, so long as the sum of savings plus the value of other nonexempt resources does not exceed the $1,000 resource limit.

The rule change at N.J.A.C. 10:82-4.4 clarifies that the $30.00 and one-third disregard for each employed individual is to be applied to earnings only when there is income remaining after disregards have been applied for work expenses and dependent care. Language has been added stating that when any part of the $30.00 and one-third disregard has been applied in a given month, that month shall be counted as one of the four consecutive months of disregard (45 CFR 233.20(a)(11)(i)(D) and (ii)(B)).

The proposed amendment at N.J.A.C. 10:82-4.6(b) corrects an omission by clarifying that income received through JTPA by an AFDC dependent child is exempt in all three income eligibility determinations: initial eligibility, maximum income eligibility, and prospective needs test.

Clarifying language has been added at N.J.A.C. 10:82-4.15 stating that no portion of lump sum income or other income may be applied toward the resource limit in the month of its receipt. The rule is based on Federal regulations at 45 CFR 233.20(a)(3)(i)(B) and (ii)(F).

The rule change at N.J.A.C. 10:82-4.17 clarifies that the first $50.00 of child support payments shall be disregarded in the prospective needs test. Language specifies that the total amount of child support disregarded shall not exceed $50.00 per month per eligible unit (45 CFR 233.20(a)(4)(ii)(j)).

Current rule at N.J.A.C. 10:82-5.3(a) provides that payments authorized by the CWA for child care expenses shall not exceed $160.00 per month per child. The proposed amendments at N.J.A.C. 10:82-5.3(d), (e) and (f) specify that child care payments for day care centers, family day care and in-home care shall not exceed this limit of $160.00 per month per child, regardless of the daily, weekly or monthly allowances established for such care.

The proposed amendment at N.J.A.C. 10:82-5.10(c) provides that when an eligible unit experiences an actual or imminent state of homelessness, payment for emergency temporary rehousing available through the Home Energy Assistance Program may be authorized in accordance with regulations at N.J.A.C. 10:89-3.4(e).

Social Impact

Positive social impact is anticipated as a result of these amendments. By updating and revising the inconsistencies in N.J.A.C. 10:82 to comport with existing Federal regulatory language, both the AFDC client population and CWAs will be benefited. This benefit will be realized by ensuring that the State and CWAs are carrying out the intent of Federal regulations with respect to the equitable treatment of applicants and recipients in AFDC eligibility processing, specifically in the evaluation of resources, age, and individuals added to an eligible unit.

The proposal will further advance the Federal mandate that only truly needy families receive AFDC, by basing need only on income that is received by a family in a given month. It will underscore that, when a family receives lump sum income which exceeds the monthly AFDC standard and therefore causes ineligibility for assistance, the family must use this entire lump sum payment to meet its needs.

The proposed amendments will ensure that other State-funded and federally-funded assistance programs are made available to AFDC families uniformly throughout the State, by setting forth references to such other programs in relevant portions of N.J.A.C. 10:82.

Further benefit for both the client population and CWAs will be realized as a result of technical amendments to N.J.A.C. 10:82, by providing greater clarification of existing Federal and State AFDC rules for users of N.J.A.C. 10:82 with regard to the eligibility factors of income, resources, expenses and disregards of income.

Economic Impact

Positive economic impact is anticipated as a result of the proposed amendments. The proposed amendments will increase the accuracy of assistance payment computations, and therefore total AFDC assistance expenditures, by specifying maximum limits for certain deductions, clarifying the situations in which additional assistance payments may be made to an eligible unit, and providing specific eligibility dates from which to prorate such additional payments.

The proposed amendments will also ensure that maximum usage is made of other Federally-funded and State-funded assistance programs, in lieu of or in absence of AFDC funding.

By amending N.J.A.C. 10:82 with more specific language, the remaining rule changes will improve the accuracy of eligibility decisions at the CWA level, and thereby increase uniformity of the application of public assistance policy statewide and result in a general savings in both assistance payments and administrative costs.

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

10:82-1.8 Parent regularly attending school (all segments)

(a) When a parent of an eligible child is a student regularly attending school as defined in N.J.A.C. 10:82-1.9, the provisions of N.J.A.C. 10:82-1.7(b) and (c) shall apply (**see N.J.A.C. 10:81-3.18(b)2ii(6)**).

1. (No change.)

10:82-1.9 School attendance defined

(a) A child **eligible under the age requirements of N.J.A.C. 10:81-3.13(a)** shall be considered a student regularly attending school or training course when [he/she] **he or she** is enrolled in and physically attending, as certified by the school or institute, a program of study or training leading to a certificate, diploma or degree:

1.-3. (No change.)

(b) (No change.)

(c) A child shall be considered in regular attendance in months in which [he/she] **he or she** is not attending because of official school or training program, vacation, illness, convalescence or family emergency, and for the month in which [he/she] **he or she** begins, completes or discontinues [his/her] **his or her** school or training program.

10:82-2.14 Establishing monthly earnings

(a) The procedures in this section apply in the determination of earned income for the purposes of establishing the amount of assistance grant with the exception of initial grants (see N.J.A.C. [10:82-2.3] **10:82-2.2**).

[(b) Conversion to monthly amounts: The procedures for determining calculated earned income (CEI) in N.J.A.C. 10:82-2.8 and 2.12 are based on monthly gross earnings. Earnings received other than monthly amounts must be converted to monthly amounts to determine CEI. For instance, weekly gross earnings shall be multiplied by 4-1/3 or 4.333 and biweekly amounts shall be multiplied by 2-1/6 or 2.167. (Note: The Conversion Tables in the Appendix may be used to convert weekly gross earnings to monthly amounts and to calculate disregards.)]

Renumber (c), (d) and (e) as **(b), (c) and (d)** (No change in text.)

10:82-2.20 Change in need while assistance is being received

(a) A change in the circumstances of the eligible unit may result in an adjustment upward or downward in the amount of the assistance payment. Unless (b) below applies, the adjustment must be effective [no later than the first day of the second month following the month] **for the payment month corresponding to the budget month in which** the change in circumstances occurred. Downward adjustments are subject to [timely and adequate notice, in accordance with N.J.A.C. 1081-7.1 through 7.6] **adequate notice if the change in circumstances was reported on the Monthly Status Report (MSR), and timely and adequate notice if the change was reported by means other than the MSR.**

[Example: A client's income increases during January. The county welfare agency must complete necessary verification and all administrative procedures, including the mailing of the appropriate adverse action notice, during February to ensure that the change is reflected in the March grant.]

(b) [Under certain situations which, in the judgement of the county welfare agency would otherwise result in undue hardship to the eligible unit, an additional payment(s)] **Additional payments to an eligible unit** supplementing the last regular payment shall be issued during the current payment period for any of the following reasons only:

1. Administrative error[;]: **The CWA shall issue an additional assistance payment(s) supplementing any assistance payment incorrectly computed or not issued due to administrative error. Such supplemental payment(s) shall be considered as corrections to underpayments;**

2. Emergency assistance[; (see N.J.A.C. 10:82-5.10)]: **The CWA shall supplement an assistance payment with additional payment(s) if authorized under the emergency assistance provisions of N.J.A.C. 10:82-5.10; or**

[3. Immediate and unanticipated reduction of income (for example, loss of employment, contributions from legally responsible relatives, Social Security or other benefits); or]

[4.]**3.** (No change in text.)

(c) Any additional payments **made** to an eligible unit due to [a change in family circumstances] **the addition of a new member** are subject to proration (see N.J.A.C. 10:82-2.2) based on the date of such change **if all other eligibility factors are met.**

1. Newborn child: The date of change for proration of an additional payment for a newborn child added to an eligible unit shall be the date the child was born.

2. Other member: The date of change for proration of an additional payment for other members added to an eligible unit shall be the date the eligible unit reports to the CWA the addition of the member.

(d) Reduction or loss of income: If the eligible unit experiences a reduction or loss of income in or after a budget month, the CWA shall not issue additional assistance payments for the corresponding processing month or payment month to supplement this loss of income. However, an eligible unit may apply for AFDC supplemental payments, set forth in N.J.A.C. 10:82-5.11, if the family has suffered a substantial loss of income due to unanticipated circumstances and its regular AFDC grant does not reflect that loss because of retrospective budgeting.

10:82-3.1 General provisions

(a) **The resource policy set forth in this subchapter applies equally to program applicants and recipients.** State and Federal laws require that the agency consider all income and resources of the eligible unit in determining **eligibility for AFDC and** the amount of assistance to be granted. Available resources include cash and other forms of income immediately obtainable to meet the needs of the eligible unit **(see N.J.A.C. 10:82-4).** [These are considered in N.J.A.C. 10:82-4.]

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

(d) The total equity value of all nonexempt resources together with savings [(as specified below)] shall not exceed $1,000.

(e) Savings (see N.J.A.C. 10:82-3.2(b)6vi) may be [accumulated only once the family is in fact] **retained by a family applying for or** receiving AFDC and may be accrued from the AFDC payment or other income, **except as provided in N.J.A.C. 10:82-4.15.**

10:82-3.2 Exempt resources

(a) Exempt resources are not subject to any requirement for liquidation and are not considered in determining the assistance grant. When any resource is not or is no longer exempt, it shall be [considered as either available income or a potential resource, according to its nature. (See N.J.A.C. 10:82-4 regarding income.)] **evaluated in accordance with N.J.A.C. 10:82-3.1(c) and considered in the determination of eligibility for AFDC.**

(b) The exempt resources are as follows[.]:

1.-5. (No change.)

6. Resources designated for special purposes as follows:

i.-iii. (No change.)

iv. In AFDC, incentive payment from participation in certain training programs;

(1) (No change.)

(2) A weekly allowance of $30.00 paid to recipients of AFDC who are participants in [CETA] **the Job Training Partnership Act (JTPA)** training programs.

v. (No change.)

vi. Savings: Those funds set aside by [an eligible unit which is in fact] **a family applying for or** receiving public assistance so long as the **sum of the** amount thus accumulated [does not exceed the total of three months' public assistance allowance standard for that eligible unit] **plus the value of other nonexempt resources does not exceed the $1,000 resource limit.**

vii. (No change.)

(1)-(8) (No change.)

7.-11. (No change.)

10:82-4.4 Disregard of earned income in AFDC-C and -F segments

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

(c) The CWA shall disregard from the total earned income not already disregarded, the first $30.00 and one-third **of** the remainder for each employed individual.

1. (No change.)

2. The $30.00 and one-third disregard is to be applied only when an amount of earned income remains, after application of the disregards in (a) and (b) above, to permit application of this disregard.

i. For any month in which any part of the $30.00 and one-third disregard is applied, that month shall be counted as one of the four consecutive months of disregard.

[2.]**3.** (No change in text.)

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

10:82-4.6 Disregard of certain allowances and payments in AFDC (all segments)

(a) (No change.)

(b) Earned income received through the JTPA by an AFDC dependent child is exempt in the determination of [income eligibility] **initial eligibility, maximum income eligibility, prospective needs test,** and grant entitlement. However, the [exclusion] **disregard** of such income shall not exceed six months in any calendar year.

1. (No change.)

(c) (No change.)

10:82-4.15 [Irregular or n]Nonrecurring **earned or unearned** lump sum income

(a) When a recipient receives nonrecurring **earned or unearned lump sum** income ([e.g.,] **for example,** retroactive RSDI payments[, income tax refunds]), that income will be added together with all other income received that month by the eligible unit after application of the disregards in N.J.A.C. 10:82-2.8 and 2.12 and the exemption of income in N.J.A.C. 10:82-2.7. **No portion of lump sum or other income may be applied toward the resource limit in the month of its receipt.** When this total exceeds the AFDC allowance standards in Tables I or II as appropriate, the family will be ineligible for AFDC for the number of full months derived by dividing this total income by the allowance standard applicable to the eligible unit. Any remaining income from this calculation is treated as if it is unearned income received in the first month following the period of ineligibility and is considered available for use at that time.

1.-5. (No change.)

(b) (No change.)

10:82-4.17 Child support received by the eligible unit

The first $50.00 of any child support payments received on behalf of a dependent child or children by any family applying for or receiving AFDC shall be disregarded [(including]. **Such child support payments shall include** disregarded child support (DCS) payments paid the family through the child support and paternity process[)] **and direct support payments received by the eligible unit which represent a current monthly support obligation.** These monies are disregarded in determination of [maximum income eligibility,] initial eligibility, **maximum income eligibility, prospective needs test,** and the grant computation. **The total amount of child support disregarded shall not exceed $50.00 per month per eligible unit.**

10:82-5.3 Child care

(a)-(c) No change.)

(d) Day care center rules:

1. (No change.)

2. The maximum allowable rate for care in a licensed (if required) day care center, regardless of the source or sources of payment, shall be the rate established by the Division of Youth and Family Services for that center for the class of service provided. If no such rate has been established, the CWA will notify the Division of Youth and Family Services of the need for an established rate. In this event, until a rate is established, the CWA maximum **rate** per child [rate], regardless of the source or sources of payment, shall be the least of the following**, not to exceed the limit at (a) above of $160.00 per mont per child:**

i.-iii. (No change.)

3. (No change.)

(e) Family day care rules are:

1. (No change.)

2. The authorized rates for family day care shall not exceed the following, as applicable, except in situations where it can be established by the worker, in cooperation with the parent, that appropriate care can only be obtained in that geographic area at a higher rate**, but the authorized rates shall not exceed the limit at (a) above of $160.00 per mont per child:**

i.-iii. (No change.)

3. (No change.)

(f) In-home care rules are:

1.-4. (No change.)

5. The authorized payment for in-home care shall be deemed to be the full cost for such services and no additional amounts shall be recognized. **The authorized payment shall not exceed the limit at (a) above of $160.00 per month per child.**

(g)-(h) (No change.)

10:82-5.10 Emergency assistance

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

(c) When there has been substantial loss of shelter, food, clothing or household furnishings by fire, flood or other similar natural disaster, or when because of an emergent situation over which they had no control or opportunity to plan in advance, the eligible unit is in a state of homelessness and the county welfare agency determines that the providing of shelter and/or food and/or emergency clothing, and/or minimum essential house furnishings are necessary for health and safety, such needs may be recognized in accordance with regulations and limitations in the following sections:

1. (See proposal at 17 N.J.R. 2336(a).)

i. (No change.)

ii. Emergency temporary rehousing: Payment for emergency temporary rehousing may be authorized under the Home Energy Assistance Program in accordance with N.J.A.C. 10:89-3.4(e).

2.-5. (No change.)

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

(f) (See proposal at 17 N.J.R. 2337(a).)

LAW AND PUBLIC SAFETY

(a)

BOARD OF ACCOUNTANCY

Notification of Convictions

Proposed New Rule: N.J.A.C. 13:29-1.14

Authorized By: Paul M. Kurisko, C.P.A., President, New Jersey State Board of Accountancy.
Authority: N.J.S.A. 45:2B-6g.
Proposal Number: PRN 1986-5.

Submit comments by March 5, 1986 to:
John J. Meade, Executive Secretary
State Board of Accountancy
Room 507A
1100 Raymond Boulevard
Newark, NJ 07102

The agency proposal follows:

Summary

The proposed new rule sets forth the requirement that all licensees of the Board of Accountancy notify the Board upon the entry of a conviction.

Social Impact

The proposed new rule will have a favorable social impact in that it will provide notification to the Board of Accountancy of any conviction entered against licensees so the Board may take prompt action to protect the public.

Economic Impact

The proposed new rule has no direct unfavorable economic impact upon its licensees because the rule imposes no financial obligation aside from the minimal cost of mailing notification to the Board of Accountancy of a conviction. It will have a favorable economic impact on the public because it will enable the Board to learn of convictions entered against licensees without requiring expenditure of the Board itself of time, effort and money to ascertain such conviction.

Full text of the proposed new rule follows.

13:29-1.14 Notification of convictions

Any licensee of the Board of Accountancy, upon conviction of any crime, is required to notify the Board of Accountancy of such conviction in writing within 30 days.

TREASURY-GENERAL

GENERAL SERVICES ADMINISTRATION DIVISION OF PURCHASE AND PROPERTY

The following proposals are authorized by James J. Rosenberg, Director, Division of Purchase and Property, General Services Administration, Department of Treasury.

Submit comments by March 5, 1986 to:
Hillary A. Peterson, Esq.
General Services Administration
135 West Hanover Street
CN 039
Trenton, New Jersey 08625

(b)

Reciprocal Action in Public Contracts Out-of-State Vendors

Proposed New Rule: N.J.A.C. 17:12-2.11

Authority: N.J.S.A. 52:27B-56 and P.L. 1985, c. 156.
Proposal Number: PRN 1986-7.

The agency proposal follows:

Summary

This new rule, N.J.A.C. 17:12-2.11, is being proposed by the Department of Treasury for implementation of statutory requirements. The rule guarantees that reciprocity shall apply to bids of out-of-state vendors whose own states apply a like policy to New Jersey vendors. A survey must be conducted on an annual basis to ensure that New Jersey vendors and out-of-state vendors are competing in a fair and equitable manner.

Social Impact

New Jersey vendors would receive the same advantages in bidding against vendors from out-of-state as those vendors receive in their own states. The proposed new rule would be used only in those cases where New Jersey vendors compete at a disadvantage.

Economic Impact

Both the State of New Jersey and its vendors would ultimately benefit from greater employment opportunities available to the citizens of this State and, in turn, the State of New Jersey would benefit because of the increased amounts of payroll and property taxes which would be paid by these firms.

Full text of the proposed new rule follows:

17:12-2.11 Preference laws; out-of-state vendors

(a) Pursuant to the provisions of Public Law 1985, Chapter 156, the Director, Division of Purchase and Property shall conduct an annual survey of all states to obtain information concerning their statutes, rules and regulations related to in-state preference for the procurement of commodities and services. The Director shall apply a like policy to bids submitted by out-of-state vendors competing in New Jersey with New

Jersey bidders for public contracts.

(b) The Director may waive the reciprocity action when, in his judgment, it is determined to be in the best interest of the State.

(a)

Cooperative Purchasing Independent Institutions of Higher Education

Proposed Amendment: N.J.A.C. 17:12-5.1
Proposed New Rule: N.J.A.C. 17:12-5.2

Authority: N.J.S.A. 52:27B-56 and P.L. 1985, c. 263.
Proposal Number: PRN 1986-6.

The agency proposal follows:

Summary

The amendment to N.J.A.C. 17:12-5.1 and new rule 17:12-5.2 are proposed by the Division of Purchase and Property, Department of Treasury, in response to the statutory requirements of P.L. 1985, c. 263. The purpose of the amendment and new rule is to include independent institutions of higher education in the cooperative purchasing program of New Jersey. The subscription fee is applied on an annual basis to all program participants to cover expenses incurred by the State to disseminate contract and specification information to those participants.

Social Impact

The new rule N.J.A.C. 17:12-5.2 formally includes independent institutions of higher education in the cooperative purchasing program, thus affording utilization of State contracts and specifications. The amendment to N.J.A.C. 17:12-5.1 includes the independent institutions of higher education in the subscription fee program equally with all participants.

Economic Impact

Participation in the Cooperative Purchasing program promotes more cost effective and efficient purchasing by independent institutions of higher education. Adding potential users to State contracts may also encourage more competitive cost proposals from vendors.

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

17:12-5.1 Subscription fees

(a) The Director, Division of Purchase and Property may establish a subscription fee for the dissemination of State contract and specification information to the local governments, school districts **and independent institutions of higher education of this State.** That fee shall be chargeable on an annual basis, and shall be structured to include direct State costs of personnel, printing and mailing of notices of contract award and other procurement information to the local governments, school districts **and independent institutions of higher education.**

(b) At the end of each fiscal year the Director, Division of Purchase and Property will review expenditures under the program, certify as to their accuracy, and adjust subscription rates accordingly.

17:12-5.2 Participation in State contracts by independent institutions of higher education

(a) Pursuant to the Public Laws of 1985, Chapter 263, the Director, Division of Purchase and Property may permit the use of selected State contracts for commodities and services by independent institutions of higher education. The Director will periodically make a list of selected contracts available to these institutions for their use.

(b) The independent institutions of higher education shall be responsible for issuance of purchase orders, certification of accepted commodities, payment of invoices, and resolution of complaints relative to procurement transactions with State contract vendors.

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF MARKETS

Sire Stakes Program Rules Appeals

Adopted Amendment: N.J.A.C. 2:32-2.36
Adopted New Rules: N.J.A.C. 2:32-3

Proposed: October 7, 1985 at 17 N.J.R. 2320(a).
Adopted: January 8, 1986 by Arthur R. Brown, Jr., Secretary, Department of Agriculture
Filed: January 9, 1986 as R.1986 d.18, **without change.**

Authority: N.J.S.A. 5:5-91.

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): March 21, 1988 for N.J.A.C. 2:32-2; February 3, 1991 for N.J.A.C. 2:32-3.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

2:32-2.36 Supervising Race Secretary
(a) A member of the New Jersey Sire Stakes staff will be appointed Supervising Race Secretary at all future Fair meets. The New Jersey Sire Stakes Board Secretary is responsible for the complete supervision of the New Jersey Sire Stakes Program as it pertains to the Fairs.
(b) Nothing herein shall be construed to rescind or replace any of the powers, rules or regulations of the New Jersey Racing Commission at any race.

SUBCHAPTER 3. APPEALS

2:32-3.1 Right of appeal
(a) Any person aggrieved by any action or inaction by the Board of Trustees, or its representatives, may request an informal meeting with the Board to settle any dispute, or seek clarification of the Board's rules and regulations. The Board shall respond, in writing, to any such request stating the reasons for its determination.
(b) If any dispute is required by law or regulation to be handled formally, or if a party is dissatisfied with an informal determination, or if the Board determines the matter contested, the matter shall be treated in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1, et seq. and N.J.S.A. 52:14F-1, et seq.), and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1.

2:32-3.2 Appeal from decisions of Supervising Race Secretary
When any decision is made by any person representing the Board of Trustees pursuant to the law of New Jersey or rules of the Board of Trustees, said decision may be appealed to the Board of Trustees and a hearing requested.

2:32-3.3 Nature of proceedings
All hearings before the Board of Trustees will be de novo proceedings and shall be accompanied by notice and an opportunity to be heard.

2:32-3.4 Appeal procedure
In the event than an appeal is taken to the Board of Trustees, said appeal and one copy, must be filed, in writing, at the office of the Board of Trustees within 20 days of the date of the receipt of the decision by the person representing the Board of Trustees.

2:32-2.5 Acting on appeals
The Board of Trustees shall act on all appeals in accordance with the laws of the State of New Jersey and the rules and regulations promulgated by the Board of Trustees.

2:32-3.6 Hearing; Costs
The applicant shall be responsible for any costs incurred in connection with any hearing held pursuant to the right of appeal contained in this subchapter and the laws of the State of New Jersey.

BANKING

(b)

DIVISION OF SAVINGS AND LOAN ASSOCIATIONS

State Savings and Loan Association Parity with Federal Savings and Loan Associations

Readoption: N.J.A.C. 3:26-4.1

Proposed: November 18, 1985 at 17 N.J.R. 2713(a).
Adopted: December 30, 1985 by Mary Little Parell, Commissioner, Department of Banking.
Filed: December 31, 1985 as R.1985 d.720, **without change.**

Authority: N.J.S.A. 17:12B-48(21); 17:1-8.1.

Effective Date: December 31, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): December 31, 1990.

Summary of Public Comments and Agency Responses:
One comment was received from the New Jersey Savings League which supported the proposed readoption.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 3:26-4.1.

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 18, 1985 at 17 N.J.R. 2714(a).
Adopted: December 31, 1985 by Gerome R. White, Jr., Acting Commissioner, Department of Community Affairs.
Filed: January 7, 1986 as R.1986 d.12, **without change.**

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

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): April 1, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:23-3.15 Plumbing subcode

(a) Rules concerning subcode adopted are as follows:

1. (No change.)

i. Copies of this code may be obtained from the sponsor at: NAPHCC, P.O. Box 6808, Falls Church, VA 22046.

2. (No change.)

3. The National Standard Plumbing Code/1984-85 supplement is adopted by reference with modifications as cited in (c) below as part of the plumbing subcode for New Jersey.

(b) (No change.)

(c) The following chapters of sections of the 1984-85 supplement to the plumbing subcode are modified as follows:

1. Chapter 7, entitled "Plumbing Fixtures" is amended as follows:

i. Figure 7.4.5 on page 21 is amended to insert the words "Twenty-one inches" in the space for clearance on the first fixture. Also delete the word "code" and substitute in lieu thereof "subcode" in the block at bottom.

HEALTH

(b)

DIVISION OF HEALTH FACILITIES EVALUATION

Physical Plant Standards for Newborn Care Services

Adopted New Rule: N.J.A.C. 8:43B-8.33 through 8.44

Proposed: March 4, 1985 at 17 N.J.R. 519(a).
Authorized By: Joseph I. Morris, Acting Commissioner, Department of Health (with approval of Health Care Administration Board).
Filed: January 3, 1986 as R.1986 d.1, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

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

Effective Date: February 2, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): February 3, 1991.

Summary of Public Comments and Agency Responses:

The Department received thirty written comments in connection with the new rule. These comments and responses thereto are set forth below.

1. Comment: Medical Center at Princeton. How would sound intensity within nursery be measured.

Response: There is a Frequency Spectrum Analyzer instrument which can measure sound intensity.

2. Comment: Underwood Memorial Hospital. Interior finish on walls in nursery shall have flexibility of color selection: flat finish.

Response: No change in rule since off white and pale beige colors do minimize distortion to color preception of infant being examined.

3. Comment: Clara Maass Hospital. Use wrist blade handle in lieu of knee action of foot control on sinks.

Response: Rule not rewritten in order to comply with Federal regulation.

4. Comment: St. Joseph Hospital and Hunterdon Medical Center. Do not need ventilation of twelve air changes per hour with five being outside air in nurseries.

Response: Rule rewritten to six air changes per hour with two being outside air for Level I and Level II facilities, twelve air changes with five outside air for Level III facility. A combination Level II and Level III facility shall have twelve air changes with five being outside air.

5. Comment: Our Lady of Lourdes Hospital. Proposed regulation requiring storage, multi-purpose and other rooms will add substantial to building envelopes of future nurseries and overall cost.

Response: No need for change in regulation.

6. Comment: Somerset Medical Center and Medical Center at Princeton. No need for Social Service work office in or adjacent to the suite.

Response: Rule rewritten to read there will be two staff offices and staff lounge in or adjacent to the suite.

7. Comment: Hunterdon Medical Center. Need only one nursing office, social service done in consultation room.

Response: Rule rewritten, see item 6 above.

8. Comment: Medical Center at Princeton. Do not understand rationale for separate storage area for commercially prepared infant formula.

Response: Rule rewritten incorporating Federal standard which must be used for reimbursement.

9. Comment: Medical Center at Princeton. Why can't the medication refrigerator suffice for storage of breast milk.

Response: Rule not rewritten since the constant opening of medication refrigerator and special precaution needed for medication refrigerator could cause problem with milk.

10. Comment: Somerset Medical Center. Question need for refrigerator in Clean Utility area.

Response: Rule rewritten deleting refrigerator from area.

11. Comment: Hackensack Medical Center and Freehold Hospital. Question need for number of multipurpose rooms in different levels of care.

Response: Rule not rewritten. Neonatal Task Force felt need for the number of multipurpose rooms should coincide with standards of American Academy of Pediatrics.

12. Comment: Medical Center at Princeton, St. Joseph Hospital and Medical Center and Freehold Hospital. Is it not sufficient to have one M.D. and nurse dressing room for the obstetrical newborn unit as a whole.

Response: Rule rewritten as requested.

13. Comment: Underwood Memorial Hospital. There shall be 40 square feet of clear floor area for resuscitation area when part of delivery/cesarean section rooms.

Response: Rule rewritten as requested.

14. Comment: Monmouth Medical Center. Resuscitation area needs more than 1 oxygen, 1 air and 1 suction outlet.

Response: Rule not rewritten since one of each is only a minimum requirement.

15. Comment: Monmouth Medical Center and Hackensack Medical Center. Admission/Observation Area and patient station for every 300 annual births is too high.

Response: Rule rewritten, one patient station for every 400 annual births.

16. Comment: Burlington Memorial Hospital, Underwood Memorial Hospital, and Somerset Medical. Admission/Observation area. Space of 40 square feet for each infant station with a minimum of 3 feet between bassinets is too much space.

Response: Rule rewritten deleting a minimum of 3 feet between bassinets.

17. Comment: Burlington Memorial Hospital, Hackensack Medical Center, Somerset Medical Center, Our Lady of Lourdes Medical Center, and Medical Center at Princeton. Two outlets for oxygen, air and suction seems excessive per each infant station.

Response: Rule rewritten as follows. Two oxygen, one compressed air and two suction outlets shall be provided at each infant station.

18. Comment: Somerset Medical Center. Consider six electrical outlets excessive for each infant station in admission/observation area.

Response: Rule not rewritten. Task Force felt six outlets as a minimum necessary.

19. Comment: Our Lady of Lourdes Medical Center, Monmouth Medical Center. Number of bassinets in normal newborn nurseries shall not exceed obstetrical beds by twenty percent. Feel twenty percent is excessive.

Response: Rule not rewritten. Agrees with American Academy of Pediatric and American College of Gynocology standards.

20. Comment: Hackensack Medical Center, Underwood Memorial, Somerset Medical Center, and Memorial Hospital of Burlington County. Proposed standard of 24 square feet per bassinet and 3 feet between appears to be excessive in normal newborn nursery.

Response: Rule not rewritten. Agrees with new Federal standard, American Academy of Pediatrics and American College of Gynocology standards.

21. Comment: Hackensack Medical Center, Burlington Memorial Hospital, Monmouth Medical Center, and Freehold Area Hospital. In normal newborn nursery recommend one each: oxygen, air, and suction outlets per bassinet instead of two each.

Response: Rule rewritten as requested.

22. Comment: St. Claire's Hospital and Freehold Area Hospital. Unreasonable to require two sinks in normal nursery on ratio of one sink per six infant stations.

Response: Rule not rewritten. As a minimum need one sink at each end of nursery at a ratio of one sink per six infant stations.

23. Comment: Memorial Hospital of Burlington County. With crib storage available an additional 8 cubic feet of storage is unnecessary in normal newborn nursery.

Response: Rule not rewritten. Task Force felt needed space to store necessary supplies and equipment.

24. Comment: Somerset Medical Center. Question need for four electrical outlets per infant station in continuing care nursery.

Response: Rule not rewritten. For the electrical equipment used in this area it is necessary to have four electrical outlets per infant station.

25. Comment: Monmouth Medical Center. Most infectious diseases are not contagious and therefore isolation rooms are only infrequently used therefore only forty square feet and one room is needed.

Response: Rule rewritten to read minimum of two infant stations of forty square feet each either one or two physical rooms.

26. Comment: Monmouth Medical Center. Recommend two each oxygen, air and suction outlets per infant station in Continuing Care nursery per infant station.

Response: Rule not rewritten since one each oxygen, air and suction outlets is minimum regulation.

27. Comment: Memorial Hospital for Burlington County. Electrical outlet for x-ray (portable) necessary and critical for Level II facility.

Response: Rule rewritten as requested.

28. Comment: Somerset Medical Center. Question need for fifty square feet per bassinet in Level II nursery.

Response: Rule not rewritten since standard agrees with Federal standards, and American Academy of Pediatrics, and American College of Gynocology.

29. Comment: St. Joseph Medical Center. Recommend one sink per four infant stations in Level II nursery.

Response: Rule not rewritten. Neonatal Task Force felt more sinks would cause less chance for infection in this nursery.

30. Comment: St. Joseph Medical Center and Monmouth Medical Center. Recommend that less than 120 square feet per bassinets and six feet between bassinets and eight feet aisles be required per infant station in Level III nursery.

Response: Rule rewritten as follows 120 square feet per bassinet allowing a minimum of 6 feet between bassinet and a minimum of an eight foot wide aisle.

Full text of the adoption follows (addition to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

8:43B-8.33 Physical plant standards

(a) Standards for construction from May 8, 1981 shall be as follows:

1. Standards for construction of new buildings, additions, alterations and renovations to existing buildings from May 8, 1981 to present shall be in accordance with the New Jersey State Uniform Construction Code and Standards imposed by the United States Department of Health and Human Services (HHS), and the State Department of Health, and the Department of Community Affairs, specifically, the HHS "Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities" (HHS Publication No. (HRA) 79-14500). In order to avoid conflict, sections 502 (except as it pertains to area limitations), 1702.7, 1716.0, Article 7 except sections 712.0, 716.0 and 717.0, and Article 8 except sections 818.6 through 818.7.6 of the building subcode of the New Jersey State Uniform Construction Code N.J.A.C. 5:23-1 et seq. shall not govern with respect to health care facilities. The HHS, HRA 79-14500 shall serve as the Uniform Code of the State in all matters regulated by the sections herein specified.

2. The licensee prior to making any alterations or improvements to an existing facility, shall submit plans and specifications to the Health Care Facility Construction and Monitoring Unit of the New Jersey Department of Health for approval before commencing such work.

3. The following standards shall be used for the construction of new buildings, additions, alterations and renovations of existing buildings.

i. When alterations exceed 50 percent of the gross square footage of a given ***functional*** area, then that entire area shall be made to comply with these standards.

ii. When alterations are less than 50 percent but greater than 25 percent of the gross square footage of a given ***functional*** area, then only the altered area need conform to these standards, and

iii. When alterations are less than 25 percent of the gross square footage of a given ***functional*** area, the authority having jurisdiction (New Jersey State Department of Health) shall determine to what degree the portions so altered shall be made to conform to the requirements of these standards.

(b) Standards for construction predating May 8, 1981 shall be as follows:

1. Standards for existing buildings or major alterations construction from July 1, 1979 through May 7, 1981 shall be in accordance with the New Jersey State Uniform Construction Code and standards imposed by the United States Department of Health and Human Services (HHS), and the State Department of Health, and the Department of Community Affairs, specifically, the HHS "Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities (HHS Publication No. (HRA) 79-14500). In order to avoid conflict, section 502 (except as it pertains to area limitations), 1702.7, 1716.0, Article 7 except sections 712.0, 716.0 and 717.0, and Article 8 except sections 818.6 through 818.7.6 of the building subcode of the New Jersey Uniform Construction Code, N.J.A.C. 5:23-1 et seq., shall not govern with respect to health care facilities. The HHS, HRA 79-14500 shall serve as the Uniform Code of the State in all matters regulated by the sections herein specified.

2. Standards for existing buildings or major alterations construction from August 1, 1977 through July 1, 1979 shall be in accordance with the New Jersey State Uniform Construction Code and standards imposed by the United States Department of Health and Human Services (HHS), the Department of Health and the Department of Community Affairs, specifically, the HHS "Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities" (HHS) Publication No. (HRA) 74-4000). In order to avoid conflict, sections 302 (except as it pertains to area limitations), 1202.7, 1216.0, Article 5 except sections 512.0, 519.0, 520.0, and Article 6 of the New Jersey State Uniform Construction Code, N.J.A.C. 5:23-1 et seq., shall not govern with respect to health care facilities. The HHS, HRA 74-4000 shall serve as the Uniform Code of the State in all matters regulated by the sections herein specified.

3. Standards for existing buildings or major alterations constructed after September, 1984, to August 1, 1977, shall conform to the United States Public Health Service Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities, "DHEW Publication No. (HRA) 74-4000 and the New Jersey Supplementary Standards to this regulation, dated June 26, 1968.

4. Standards for existing buildings or major alterations constructed before September 1, 1974, shall conform to the United State Public Health Service Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities (930-A-7) and the New Jersey Supplementary Standards to this regulation, dated June 26, 1968.

8:43B-8.34 Functional areas

(a) Functional areas for newborn care are as follows:

1. Resuscitation Area or Room;
2. Admission/Observation Area;
3. Normal Newborn Nursery (Level I);
4. Continuing Care/Growing Nursery or Area;
5. Suspect/Isolation Nursery;
6. Intermediate Care Nursery (Level II); and
7. Intensive Care Nursery (Level III).

8:43B-8.35 General requirements for all functional areas

(a) General requirements for all functional areas for newborn care are as follows:

1. The area shall be lighted so that illumination shall provide a minimum of 100 foot-candles with a maximum lighting level of 150 foot-candles at the body surface of the infant.

2. Viewing windows shall be extensive throughout the Newborn Suite. Exterior windows shall be energy efficient and insulated.

3. Newborn care areas shall have oxygen and compressed air piped from central source at 50-60 pound per square inch (psi). Reductions value and mixers shall produce 21 percent-100 percent concentration of oxygen at atmospheric pressure for head hoods and 50-60 psi for mechanical ventilators.

4. ***Oxygen;*** air and suction systems shall have chime alarms to signal loss of suction or low oxygen and air supply.

5. The construction of the nursery shall include acoustic absorption units or other means to keep sound intensity below 75 decibels (db).

6. A temperature of 75 degrees and a relative humidity of 50 percent shall be maintained.

7. Walls shall be off white or pale beige color to minimize distortion of staff's color preception in patient care area.

8. An Emergency Call System shall be provided in each nursery.

9. A free standing hand-washing sink shall be provided with foot or knee controls and a bowl large and deep enough to prevent splashing and that promotes proper drainage. Each lavatory shall have liquid soap dispenser and disposable towel dispenser.

10. Electrical outlets shall be supplied by at least two branch circuits of 15 AMPs each.

11. In the entire Newborn Suite there shall be a total of 12 air changes per hour with five of these changes being outside air, and filtration of 25 percent, then 90 percent before entering nursery. Positive pressure shall be maintained.

8:43B-8.36 Supporting service areas

(a) *[The nursing supervisor's office, head nurse's office and social work office and nurses]* ***There shall be two staff offices and staff*** lounge *[shall be]* in or adjacent to the suite.

(b) The following requirements will apply to infant formula facilities.

1. If the formula is prepared on the hospital site, the following shall be provided:

i. Clean-up facilities for washing and sterilizing supplies.

ii. A separate room for preparing infant formulas. No direct access from formula room to a nursery or to a nursery workroom shall be permitted; and

iii. A separate refrigerator/freezer shall be provided in this area for storage of breast milk and formula.

2. If a commercially prepared ***pre-package*** infant formula is used, then a separate *[storage]* ***clean*** area shall be provided. This storage may be provided in the Nursery Workroom. *[A separate refrigerator/freezer shall be provided in this area for storage of breast milk.]* ***The preparation area shall have work counter, handwashing sink and storage facilities.***

3. Breast Milk.

1. A separate refrigerator/freezer shall be provided in this area for storage of breast milk.

(c) Soiled utility room shall contain the following:

1. A clinical sink;
2. A work counter;
3. A hand-washing sink with foot and knee control;
4. Liquid soap dispensers;
5. Paper towel dispenser; and
6. Space for storage of soiled equipment, soiled linen and trash receptacles.

(d) The clean work area or room shall have:

1. Counter with cabinets;
2. A refrigerator;
3. A ***handwashing*** sink with knee or foot control; and
4. *[Soap and paper towel dispensers.]* ***Liquid soap dispensers;***

5. Paper towel dispenser;

6. Space for storage of clean equipment, clean linen.

(e) Janitor's closet shall be provided in the suite with floor receptor or service sink and storage space for housekeeping equipment and supplies.

(f) There shall be a clerical area near the entrance to the nurseries, to provide an area for recording as well as to supervise traffic and eliminate unwarranted entry into the patient care area. This area shall have telecommunication with all nursery areas and the Delivery suite.

(g) Multi-purpose rooms shall contain the following:

1. In Level I Facilities there shall be one multi-purpose room for consultation and conferences;
2. In Level II Facilities there shall be two multi-purpose rooms which are a consultation/conference room and parent teaching/breast feeding room; and
3. In Level III Facilities there shall be four rooms which are a parent-teaching room/demonstration room, a consultation/conference room, parent room for breast feeding and a parent sleeping room with adjoining toilet and shower.

(h) The Normal Newborn Nursery, Continuing Care and Admission Nursery shall be served by a connecting workroom. It shall contain work space with counter, refrigerator, ***handwashing*** sink with foot or knee control and storage space. One workroom may serve several Normal Newborn Nurseries provided that required services are convenient to each.

(i) There shall be a *[physicians' dressing room and nurses' dressing room at the entrance to the nursery suite.]* ***male and female changing area to service the nursery suite prior to entering the clean area of the nursery.***

(j) A scrub/gowning area shall be provided for staff and housekeeping personnel at the entrance of each nursery but separated from the work area. This area shall contain a free standing hand washing sink with foot and knee control and a bowl large enough to prevent splashing and to allow proper drainage. There shall be racks, hooks or lockers for storage of street clothes and personal items, cabinets for clean gowns, receptacle for used gowns and a large wall clock with sweep second hand for timing hand washing.

1. Intermediate (Level II) and Intensive (Level III) Care Nurseries since work areas and facilities are provided within the nursery, the scrub/gowning facilities shall be located near the entrance of the nursery in an alcove and shall be separated from the patient care area.

8:43B-8.37 Resuscitation area

(a) The resuscitation area shall be part of the Delivery/Cesarean Section Room or a separate Resuscitation Room adjacent to and opening into the Delivery/Cesarean Section Room.

(b) Resuscitation area shall contain ***a minimum of*** 40 ***additional*** square feet of clear floor area when included as part of the Delivery/Cesarean Section Room.

(c) If the program requires a separate Resuscitation Room, it shall contain a minimum of 120 square feet of clear floor area.

(d) The area shall have ***a minimum*** one oxygen outlet, one compressed air outlet, and one suction outlet.

(e) A minimum of six single or three duplex electrical outlets shall be provided. If a separate Resuscitation Room is provided, an electrical outlet to accommodate a portable X-ray machine shall be provided, in addition to those required above.

(f) If a separate Resuscitation Room is provided it shall contain a free standing hand-washing sink.

(g) General requirements for the Resuscitation Area are as follows:

1. Overhead source of radiant heat;
2. Large wall clock with a clearly visible second hand;
3. Flat working surface for charting; and
4. Table or flat surface for trays.

8:43B-8.38 Admission/observation area

(a) The admission/observation area shall be near or adjacent to the delivery/cesarean section room and convenient to postpartum Nursing Unit. One patient station for every

[300] ***400*** annual births shall be provided. There shall be a minimum of two stations in this area. In Level I Facilities, the Admission/Observation area may be located in the Newborn Nursery or Continuing Care Area, if a separate room is not provided.

(b) There shall be a minimum of 40 square feet of *[space]* ***floor area*** for each infant station with a minimum of three feet between bassinets.

(c) Two oxygen, *[two]* ***one*** compressed air and two suction outlets shall be provided *[for]* ***at*** each infant station.

(d) Six single or three duplex electrical outlets shall be provided *[for]* ***at*** each infant station.

(e) A free standing hand-washing sink shall be provided.

(f) General requirements of the admission/observation are as follows:

1. Overhead source of radiant heat.
2. Large wall clock with clearly visible second hand.
3. Flat working surface for charting.
4. Table or flat surface for trays.

8:43B-8.39 Normal newborn nursery ***(Level I)***

(a) Location—Normal newborn nurseries shall be located close to the Postpartum Unit and shall be arranged to preclude unrelated traffic.

(b) The number of bassinets shall exceed the number of licensed obstetric beds by not less than 20 percent in order to accommodate multiple births and extended hospitalization beyond mother's discharge date as well as beyond 28 days.

(c) There shall be a minimum of 24 square feet for each bassinet with three feet between bassinets.

(d) A maximum of 12 bassinets shall be permitted in one Normal Nursery.

(e) Oxygen, air and suction outlets—Two oxygen, two compressed air and two suction outlets shall be provided for each infant station.

(f) Electrical outlets—Two single or one *[pair]* ***duplex*** of wall-mounted electrical outlets shall be provided for each two infant stations.

(g) Hand-washing facilities—A free standing hand-washing sink shall be provided. There shall be one sink for every six infant stations.

(h) A soiled utility room shall be provided.

(i) A clean *[work area or room]* ***utility room or area*** shall be provided.

(j) A parent room shall also be provided to be used for breast feeding after mother's discharge and sibling visitations.

(k) An examination and treatment room or work area shall be provided within the suite. This area shall contain a work-counter, storage and a free standing sink equipped for hand-washing with foot or knee control.

(l) Storage facilities for the Newborn Nursery are as follows:

1. There shall be bedside cabinet storage of eight cubic feet per each infant station.
2. There shall be three cubic feet per infant for secondary storage of items such as linens and formula within the area.
3. There shall be six square feet per infant for large items of equipment in a clean storage area.

8:43B-8.40 Continuing care/growing area

(a) Continuing care/growing nursery is for low birth weight infants who are not sick, but require frequent feedings, or infants who no longer require intermediate care but still require more nursing hours and closer observation than normal infants. This area shall be close to Intensive and Intermediate care nursery or may be a part of Intermediate Care Nursery.

(b) There shall be ***a minimum*** 40 square feet for each infant station with four feet between bassinets.

(c) There shall be one oxygen, one compressed air, and one suction outlet for each infant station.

(d) There shall be four electrical outlets for each infant station.

(e) If continuing care nursery is a separate nursery then a separate work are with a scrub sink shall be provided.

8:43B-8.41 Isolation/suspect nursery

(a) Each Isolation Nursery shall be *[a structurally]* ***an enclosed and*** separate room within the Newborn Nursery Unit.

(b) The Isolation Nursery shall provide ***a minimum*** 40 square feet of space per infant exclusive of lavatory. There shall be a minimum of two *[such rooms, which may share a common anteroom]* ***stations with either one or two physical rooms which may share a common anteroom.***

(c) A free standing hand-washing sink shall be provided at the entrance inside the Isolation nursery anteroom with foot or knee control.

(d) One oxygen, one compressed air, and one suction outlet shall be provided for each infant station.

(e) Four electrical outlets shall be provided for each infant station.

8:43B-8.42 Intermediate Care Nursery (Level II)

(a) The Intermediate Care Nursery should be close to the Delivery/Cesarean Section Room and the Intensive Care Nursery and it shall be located away from general hospital traffic.

(b) Each infant patient station shall have ***a minimum*** 50 square feet of floor space excluding ancillary space for storage. There shall be four feet between incubators or bassinets with an aisle at least five feet wide.

(c) Each infant care station shall have two oxygen outlets, two compressed air outlets, and two suction outlets.

(d) Eight electrical outlets shall be provided for each infant station. ***There shall be an electrical outlet for X-ray (portable).***

(e) A free standing hand-washing sink ***, soap dispenser and towel dispenser*** shall be provided at the entrance of the Intermediate Care Nursery. One sink shall be provided for each three infant care stations within the nursery.

(f) A soiled utility room shall be provided.

(g) A clean utility room or area shall be provided.

(h) Storage facilities for the Intermediate Care Nursery (Level II) are as follows:

1. There shall be eight cubic feet of storage for each infant care stations for supplies needed for immediate use of shelves and cabinets within nursery;
2. There shall be at least 20 square feet of floor space for each infant care station adjacent to or within the Intermediate Care Nursery outside of the patient area; and
3. There shall be 16 cubic feet of shelf or cabinet space for each infant care station adjacent to or within the Intermediate Care Nursery but outside of the *[nursery]* ***patient*** area.

8:43B-8.43 Intensive Care Nursery (Level III)

(a) The Intensive Care Nursery shall be near the Delivery Room and shall be accessible from an ambulance entrance. This area shall be removed from routine hospital traffic.

(b) The Intensive Care Nursery shall provide 120 square feet per bassinet or incubator *[with]* ***allowing*** a minimum of six feet between bassinets and a minimum of an eight foot wide aisle.

(c) There shall be three oxygen outlets, three compressed air outlets, and four suction outlets for each infant care station.

(d) There shall be 16 electrical outlets for each infant care station. Special outlet shall be provided to supply power for portable X-ray machine to serve neonatal area.

(e) Storage facilities for the Intensive Care Nursery (Level III) are as follows:

1. There shall be 16 cubic feet of storage counter and cabinets for supplied needed for immediate use within the infant's room for each infant care station.

2. There shall be for each infant care station at least 30 square feet of floor space adjacent to or within the Intensive Care Nursery but outside of *[nursery area]* ***patient area***.

3. There shall be 24 cubic feet for each infant station of shelf or cabinet space adjacent to or within the Intensive Care Nursery but outside of the *[nursery area]* ***patient area***.

(f) Soiled utility room—A soiled utility room shall be provided.

(g) Clean utility room or area—A clean utility room or area shall be provided.

(h) Hand-washing facilities—A free-standing hand-washing sink shall be provided at the entrance to the Intensive Care Nursery. One sink with foot or knee control shall be provided for each *[four]* ***three*** infant care stations within the nursery.

(i) On-Call rooms—There shall be on-call room(s) on this floor for staff with an adjoining toilet and shower.

8:43B-8.44 Shared services level II and level III

(a) If Intermediate Care Nursery (Level II) and Intensive Care Nursery (Level III) are located in the same suite then the following services can be shared:

1. Janitor's closet;
2. Soiled utility;
3. Clean utility;
4. Demonstration/conference room;
5. Storage room;
6. Formula storage room;
7. Male/female staff lockers, lounge and toilets;
8. Parent waiting room;
9. Consultation room; and
10. Public toilet and telephone.

HUMAN SERVICES

DIVISION OF PUBLIC WELFARE

(a)

Public Assistance Manual
Continued Absence; WIN Registration

Adopted Amendment: N.J.A.C. 10:81-2.7 and 3.18

Proposed: October 7, 1985 at 17 N.J.R. 2333(a).
Adopted: January 2, 1986 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.
Filed: January 6, 1986 as R.1986 d.9, **without change.**

Authority: N.J.S.A. 44:7-6 and 44:10-3; 45 CFR 224.20(a), 45 CFR 244.50(h) and 45 CFR 224.51(a)(1) and (2).

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): July 20, 1988.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

10:81-2.7 Deprivation of parental support in AFDC-C

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

(d) Absence: Continued absence of the parent from the home constitutes deprivation of parental support or care. Absence will be considered continued when it interrupts or terminates the parent's functioning as a provider of maintenance, physical care, or guidance for the child, and the known or indefinite duration of the absence precludes the parent's performance of his or her function in planning for the present support or care of the child. If these conditions exist, the parent may be absent for any reason, and he or she may have left only recently or sometime previously.

1. When information is received that an AFDC recipient and his or her children are "living with" or being "frequently visited" by the allegedly absent parent of one or more of the children, the CWA shall immediately commence a comprehensive investigation of the family situation. Such investigation shall include:

i. Checking with appropriate authorities, for example, the Division of Motor Vehicles, the Postal Service, utility and telephone companies, employers and landlords to ascertain whether the allegedly absent parent's address is the same as the recipient's address;

ii. Obtaining information from collateral sources to determine whether the parent is living at the recipient's address, or, if he or she only visits, how often and for how long (affidavits of these circumstances or, more importantly, agreements to testify, if necessary, should be obtained);

iii. Observing the family home (on more than one occasion);

iv. Interviewing both the AFDC recipient and the allegedly absent parent as to the status of their living arrangements, the frequency, duration, and nature of his or her visits to the family home, the present fanancial arrangements between them, confronting them with the information previously obtained from independent sources, and permitting them an opportunity to admit, deny, contradict or explain any or all of it; and

v. Following up all leads obtained during the interview, to confirm or disapprove assertions made during the interview.

2. When the investigation is completed, the CWA shall determine whether the parent is continually absent. If it is determined that the parent is residing with the eligible unit, such parent is not to be considered continually absent. If it has been determined that the parent is not residing with the eligible unit, in order to establish that such parent is not to be considered continually absent, evidence must exist of the parent's provision of three parental functions: maintenance, physical care, and guidance to the child(ren). Unless all three parental functions are present, the "absent" parent shall be considered continually absent. Evidence supporting the de-

termination of continued absence must be fully documented in the case record.

3. If the CWA is convinced that the parent is not absent and the family is no longer eligible for AFDC-C based on deprivation of parental support or care, the CWA shall terminate assistance. The adverse action notice shall give as the reason for the action that the "absent" parent is either living in the home or that his or her presence in the home is such that he or she can no longer be considered to be continually absent therefrom, and cite the appropriate regulations.

(e) (No change.)

10:81-3.18 Employment and training requirements

(a) (No change.)

(b) AFDC-C and -F segments (WIN Counties): County welfare agencies, as agents of the United States Department of Labor in those geographical areas designated as WIN counties are responsible, through the income maintenance staff, for determining who is required to register for WIN by completing Form PA-401, WIN Case Review Document (see appendix C).

1.-3. (No change.)

4. In AFDC-C cases where the stepparent is designated as an individual whose presence in the home is essential to the well-being of the spouse and thus included in the eligible unit (see N.J.A.C. 10:82-2.9), the procedures below are to be followed with respect to WIN/ES registration:

i. Criteria identified in N.J.A.C. 10:81-3.18(k)10 shall be used to determine who is the principal earner in the household.

ii. The eligible unit member designated as the principal earner shall be required to register with WIN, or if exempt in accordance with N.J.A.C. 10:81-3.18(b)2ii(4), shall be registered with ES.

iii. If the principal earner refuses or fails to register with WIN or ES, as appropriate, the penalty specified in N.J.A.C. 10:81-3.18(b)3i shall be imposed.

iv. When the principal earner is registered and has not refused to participate or accept employment without good cause, the other parent shall be exempt from work registration in keeping with N.J.A.C. 10:81-3.18(b)2ii(7).

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

(f) Failure to report for appraisal interview: When a mandatory registrant fails to appear for a second scheduled appraisal interview and a determination of "without good cause" has been established, such registrant shall be deregistered by ES/WIN. The CWA shall be notified of the individual's failure to participate.

(g) Refusal to participate: The determination of refusal or failure to participate is the responsibility of ES/WIN and shall be binding upon the CWA.

1. Sanctions: A mandatory WIN registrant who is deregistered for refusal without good cause to participate in WIN shall be subject to the following sanctions:

i. If the individual is the parent or parent-person receiving AFDC-C, he or she will be deleted from the elegible unit, and assistance in the form of protective or vendor payments will be provided. The sanctioned parent or parent-person may not be the payee for such protective or vendor payments, unless the CWA is unable to locate a suitable protective payee (see N.J.A.C. 10:81-4.10(e)).

ii.-iv. (No change.)

2. Sanction periods: The sanctions in (g)1 above shall become effective on the first day of the first payment month that the sanctioned individual's needs are removed from the AFDC grant. When a mandatory WIN registrant receiving AFDC-C or -F payments has been found to have failed or refused without good cause to participate in the WIN program or has terminated employment, or has refused to accept employment without good cause, the following sanction periods shall apply:

i. For the first occurrence, the individual shall be deregistered for three payment months.

ii. For the second and subsequent occurrences, the individual shall be deregistered for six payment months.

3. Individuals who are deregistered on the basis of a "without good cause" determination may, upon application and an indication to WIN project staff of a willingness to participate, again register for WIN. For the first occurrence, such individuals may again register after three payment months have elapsed since the effective date of the deregistration. For the second and subsequent occurrences, such individuals shall not be registered or reaccepted into the WIN program unless satisfactory evidence is given of willingness to participate and six payment months have elapsed since the effective date of the latest deregistration.

4.-6. (No change.)

(h)-(j) (No change.)

(k) To qualify for AFDC-F, the following criteria must be met:

1. The principal earner has been unemployed for at least 30 days prior to the receipt of public assistance.

i. Unemployed is defined as:

(1)-(2) (No change.)

(3) Participating in work which exceeds the 100 hour per month standard but is intermittent and the excess is of a temporary nature, as evidenced by the fact that the principal earner was under the 100 hours standard for the two prior months and is expected to be under the standard during the next month.

2.-10. (No change.)

(l) (No change.)

(a)

Public Assistance Manual Photo Identification Cards; Child Care Payments for Ex-WIN Children

Adopted Amendments: N.J.A.C. 10:81-2.16, 3.18

Proposed: October 7, 1985 at 17 N.J.R. 2335(a).
Adopted: January 2, 1986 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.
Filed: January 6, 1986 by R.1986 d.6, **without change.**

Authority: N.J.S.A. 44:7-6, 44:10-3; 45 CFR 233.20(a)(2)(v) and 233.20(a)(11)(i)(c).

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): July 20, 1988.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

10:81-2.16 Photo identification cards

Photo identification cards will be issued routinely to recipients as a condition of eligibility for assistance (also see N.J.A.C. 10:81-7.15(d)3 and 4).

10:81-3.18 Employment and training requirements

(a)-(i) (No change.)

(j) Payment of child care for ex-WIN children: When provision of child care through the WIN program will cease due to the client's obtaining employment, a Letter of Notification, Form DYFS 7-39, shall be issued by the Division of Public Welfare/Bureau of Employment Programs (DPW/BEP) 45 days prior to such action. Upon receipt of the notification, the CWA shall adjust the client's grant to reflect the costs of child care, effective as of the date the client assumes responsibility for payment of such care. Such costs shall be deducted in accordance with N.J.A.C. 10:82-2.8(a)2.

1. The CWAs shall confirm the client's grant adjustment by completing Form DYFS 7-40, Child Care Action Notice. The effective date of such adjustment will be the day following the date indicated on the DYFS 7-39 form.

i. The DPW/BEP copy of Form DYFS 7-40 must be received in that office no later than 20 days prior to the client's assumption of responsibility for child care payments.

(k) (See adoption in this issue.)

(l) (No change.)

(a)

General Assistance Manual Eligibility in Other Programs

Adopted Amendment: N.J.A.C. 10:85-3.4

Proposed: October 21, 1985 at 17 N.J.R. 2520(a).
Adopted: January 2, 1986 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.
Filed: January 6, 1986 as R.1986 d.4, **without change.**

Authority: N.J.S.A. 44:8-111(d).

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): July 25, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:85-3.4 Resources

(a) Definition: For purposes of this manual, resources are defined as real or personal property which is within the control of one or more of the individuals applying for General Assistance or to which he or she (they) may have a valid claim; and certain other benefits and contributions of support which may become available.

1.-2. (No change.)

3. Eligibility for benefits under any other public program represents a source of support. Applicants for and recipients of General Assistance must, as a condition of eligibility, do all things which are reasonable and necessary to establish and maintain eligibility in any other public program whenever the benefits of such program might serve or do serve to reduce the amount of any General Assistance program payment. Any person who fails or refuses, after 30 days written notice, to cooperate in establishing or maintaining eligibility in such other program is not eligible for General Assistance.

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

(b)

General Assistance Manual Inpatient Hospitalization

Adopted Amendment: N.J.A.C. 10:85-5.2 and 11.2

Proposed: October 21, 1985 at 17 N.J.R. 2521(a).
Adopted: January 2, 1986, by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.
Filed: January 6, 1986 as R.1986 d.7, **without change.**

Authority: N.J.S.A. 44:8-111(d), 122, 124, 148-152.

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): July 25, 1988.

Summary of Public Comments and Agency Response:
No comments received.

Full text of the adoption follows.

10:85-5.2 Inpatient hospital care

(a) When inpatient care in a general hospital licensed by the New Jersey Department of Health has been prescribed by a full licensed physician, dentist, or podiatrist for medical, surgical or psychiatric treatment, diagnosis, and/or rehabilitation and the conditions of N.J.A.C. 10:85-3.3(g)3 are met, payment authorization shall be governed by the following:

1. If the hospital is located in a county of the first class, the director shall authorize the payment.

2. If the hospital is located in a county other than a county of the first class and is operated or controlled by the State or any county, municipal, or other public entity, the director shall not authorize any payment.

3. In all other instances the director shall either authorize or deny the payment in accordance with municipal policy. Such municipal policy shall have been previously determined and shall be consistently applied in all cases of inpatient hospitalization in nonpublic hospitals in counties other than those of the first class.

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

10:85-11.2 Definitions

(a)

Medical Only Manual
Change of County Residence

Adopted Amendment: N.J.A.C. 10:94-3.6

Proposed: October 21, 1985 at 17 N.J.R. 2523(a).
Adopted: January 2, 1986 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.
Filed: January 6, 1986 as R.1986 d.8, **with technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 44:7-87

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): July 20, 1988.

Summary of Public Comments and Agency Response:
No comments received.

Summary of Change Subsequent to Proposal:
At N.J.A.C. 10:94-3.6(e)1i, the word "completely" is corrected to read "completed".

Full text of the adoption follows.

10:94-3.6 Change of county residence
(a)-(b) (No change.)
(c) The county of origin shall initiate and the receiving county shall, on request, immediately undertake an investigation of the circumstances surrounding the move. If the move is permanent, each county shall execute its respective responsibilities in accordance with (d) and (e) below.
(d) Applicants: Applicants are those individuals applying for Medicaid in the county of origin who move to the receiving county before the eligibility determination has been completed.
1. County of origin: The county of origin has the responsibility to:
i. Complete the eligibility determination process;
ii. Accrete the individual to the Medicaid Status File (MSF) with the correct effective date of Medicaid eligibility and the new address (in the receiving county); and
iii. Within five working days of the eligibility determination, transfer the case record material to the receiving county in accordance with (e)1i through iv below.
2. Receiving county: The receiving county has the responsibility to:
i. Communicate promptly with the client and/or the client's authorized representative upon receipt of the case material to advise of the continued receipt of medical assistance; and
ii. Notify immediately in writing the county of origin of the date the case material was received.
(e) Recipients: Recipients include all individuals determined eligibile for Medicaid Only.
1. County of origin: The county of origin has the responsibility to:
i. Transfer, within five working days from the date it is notified of the actual move, a copy of pertinent case material to the receiving county. Such material shall include, at a minimum, a copy of the first application and most recent PA-1G form (including all verification), Social Security numbers, the recipient's new address in the receiving county, and PA-3L form, completed with the individual's circumstances current as of the month of the transfer;
ii. Send with the above case material a cover letter specifying that the case is being transferred and requesting written acknowledgment of receipt;
iii. Forward promptly to the receiving county copies of any other material mutually identified as necessary for case administration; and
iv. Notify the receiving county if there will be a delay in providing any case material described in (e)1i or iii above.
2. Receiving county: The receiving county has the responsibility to:
i. Communicate promptly with the client and/or the client's authorized representative when case material is received. Such communication shall arrange for the client and/or the client's authorized representative to make application within 10 working days of the contact to ensure uninterrupted receipt of medical assistance;
ii. Notify immediately in writing the county of origin of the date the initial case material was received;
iii. Determine eligibility for the individual. Identify and resolve questions of the eligibility determination made by the county of origin and receiving county. Advise the county of origin of any discrepancies in the eligibility determinations between the two counties;
iv. Certify eligibility for medical assistance (provided application to transfer has been made) effective for the next month if the initial case material has been received before the 10th of the month;
v. Certify eligibility for medical assistance (provided application to transfer has been made) for the second month after the month of receipt of initial case material when such material is received on or after the 10th of the month;
vi. Update the Medicaid Status File (MSF), if necessary. If the individual is determined eligibile for Medicaid Only in the receiving county, there shall be no interruption of Medicaid eligibility and no change to the MSF is necessary. If the individual is determined ineligibile for Medicaid Only in the receiving county, Medicaid eligibility shall be terminated, subject to timely and adequate notice, and the individual deleted from the MSF; and
vii. Notify the county of origin of the date eligibility for medical assistance will begin or will be terminated in the receiving county.
(f) Any case for which transfer procedures in (c) through (e) above are not begun within 30 days of the date of original referral, shall be promptly reported by the county of origin to the Division of Public Welfare by letter, setting forth the pertinent available facts. This does not mean that the actual transfer must be completed within 30 days, but rather that the procedures shall be commenced within that time.

(a)

Medicaid Only Manual
Other Payments, Responsibilities, and Medical Assistance for the Aged Continuation

Readoption: N.J.A.C. 10:94-7, 8 and 9
Adopted Amendments: N.J.A.C. 10:94-7.1 through 7.5, 8.1 through 8.8, and 9.2 and 9.5

Proposed: October 7, 1985 at 17 N.J.R. 2340(a).
Adopted: January 2, 1986 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.
Filed: January 6, 1986 as R.1986 d.5, **without change.**

Authority: N.J.S.A. 44:7-87 and 30:4D-7.

Effective Date of Readoption: January 6, 1986.
Effective Date of Amendments: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): January 6, 1991.

Summary of Public Comments and Agency Response: **No comments received.**

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:94-7, 8 and 9.

Full text of the adopted amendments follows.

10:94-7.1 General provisions

Medicaid Only recipients, like Supplemental Security Income (SSI) recipients are eligible to receive services and related service payments for services identified at N.J.A.C. 10:94-7.2 and for payment of burial and funeral expenses as authorized by N.J.A.C. 10:94-7.5. Such payments as deemed necessary and appropriate by the county welfare agency shall be paid either directly to the vendor of the service or by a check issued to the eligible person.

10:94-7.2 Services and service payments

Eligible applicants and recipients as defined under the State Plan for Title XX of the Social Security Act may receive the services and related service payments specified in the State Plan. The Division of Youth and Family Services is responsible for providing the county welfare agency with policies and procedures regarding these service programs, including those specified in N.J.A.C. 10:94-7.3.

10:94-7.3 Other service payments

Eligible applicants and recipients of Medicaid Only are also eligible to receive certain service payments as authorized at N.J.A.C. 10:82-5.2 through 5.4. These include payments for expenses incident to homemaker service, travel costs for health care, and child care in certain situations.

10:94-7.4 Emergency assistance payments

Eligible applicants and recipients of Medicaid Only are not eligible to receive emergency assistance as defined in N.J.A.C. 10:82-5.10.

10:94-7.5 Payment of burial and funeral expenses

The county welfare agency is directed, under certain situations, to provide payments for burial and funeral expenses on behalf of Supplemental Security Income and adult "Medicaid Only" recipients, as well as former Old Age Assistance, Disability Assistance and Assistance for the Blind recipients. The procedure authorizing these payments is located at N.J.A.C. 10:100-3.3 through 3.9.

10:94-8.1 Other agency responsibilities

(a) Determination of continuing eligibility: The eligibility of each case shall be redetermined at least once every 12 months. This redetermination provides an opportunity to evaluate the total situation and enables the Income Maintenance (IM) worker to ascertain whether the individual's eligibility has changed.

1. It shall be the agency's responsibility to review indications of ineligibility as they occur and to discontinue Medicaid Only eligibility when appropriate and without delay. The agency shall notify each applicant/recipient of any agency decision that relates to his or her eligibility status in accordance with the provisions of N.J.A.C. 10:94-8.1(e) and 8.3.

2. The individual, or his or her authorized representative, shall execute a formal written application, Form PA-1G, Application and Affidavit for Medical Assistance Only (Aged, Blind, or Disabled), for continuance of assistance at least once every 12 months.

(b) Process of redetermination:

1. Personal interview: The IM worker shall coduct a face to face interview regarding application for continuance of Medicaid Only and shall assist in the completion of the application form, Form PA-1G, if necessary.

2.-4. (No change.)

(c) Recording and recommendation: A Summary Report, Form PA-2D, concerning all pertinent information shall be completed for each contact with the individual, whenever it occurs. Whenever a change in circumstances affects any facet of eligibility, a Medicaid Eligibility Worksheet (Form PA-1E) and a Worksheet and Authorization for Public Assistance (Form PA-3A) shall be prepared. The summary shall clearly state the basis for any suspension of eligibility or termination. Following each redetermination of eligibility, it is the responsibility of the IM worker to recommend on form PA-3A that eligibility be continued, suspended, or terminated.

(d) Disposition of application for continuance: Following supervisory approval, an application for continuance shall be acted upon by one of the following methods:

1. Action by executive authority: The Director of Welfare (or his or her authorized representative) shall, by his or her legal authority, continue, suspend, or terminate eligibility when, in his or her judgment, such action should be taken in advance of welfare board action. Such cases shall thereafter be presented to the welfare board at its next meeting. In those counties not having welfare boards, the authority for final action as to the disposition to continue, suspend or terminate eligibility shall rest with the Director of Welfare and the provisions of (d)2 below shall not apply.

2. Action by the welfare board: The following applications for Medicaid Only continuation shall be routinely presented to the welfare board for decision:

i.-ii. (No change.)

3. (No change.)

(e) Notice of agency decision: Each applicant/recipient shall receive written notice of any agency decision which relates to his or her eligibility status at least 10 days prior to any change in his or her eligibility status.

10:94-8.2 Redetermination of medical eligibility

(a) Redetermination of disability and blindness factors:

1. Requirement: There shall be redetermination of the factors of disability and blindness for every Medicaid Only recipient at intervals set by the Bureau of Medical Affairs, except those recipients who are currently receiving SSA Disability Insurance Benefits. The redetermination review date is designated on Form PA-8, Record of Action: Medical Eligibility Factor (see N.J.A.C. 10:94-3.13(g)).

2. Evidence of continuation of disability or statutory blindness: An individual who has been determined to be disabled or statutorily blind shall, if requested with reasonable notice, present himself or herself for and submit to examinations or tests, and shall submit medical and other evidence necessary for the purpose of determining whether he or she continues to be disabled or statutorily blind.

3. Procedures for county welfare agency:

i. Scheduling of "redetermination review" date: In Medicaid Only cases, the CWA shall take into account the redetermination review date on Form PA-8 in scheduling both the annual review and interim visits. The CWA may adjust the date for case submittal to the Bureau of Medical Affairs to coincide as closely as is practical with either the annual review or with an interim visit, but such adjustment shall assure that the case will be submitted not more than two months earlier and in no event later than the date originally set on Form PA-8.

(1) (No change.)

ii. IM worker's control: The IM worker shall organize his or her caseload controls (notebooks, index, etc.) so that he or she will be alerted sufficiently in advance of redetermination review dates to enable him or her to obtain any specific medical information or reports requested on the last Form PA-8. The data and reports so submitted must be "current."

iii.-v. (No change.)

10:94-8.3 Notice of county welfare agency decision

The county welfare agency shall promptly notify, in writing, the applicant for, or recipient of, Medicaid Only of any agency decision. The policies and procedures outlined in N.J.A.C. 10:81-7.1 through 7.6 shall be followed.

10:94-8.4 Complaints and fair hearings

(a) It is the right of every applicant for or recipient of Medicaid Only to be afforded the opportunity for a fair hearing in the manner established by the policies and procedures set forth in N.J.A.C. 10:81-6, regarding complaints and fair hearings (see N.J.A.C. 1:1). Complaints and fair hearings regarding Medicaid Only eligibility should be referred to:

Division of Public Welfare
Bureau of Administrative Review and Appeals
CN 716
Trenton, New Jersey 08625

(b) In situations where an applicant or recipient is denied medical services to which he or she feels that he or she is entitled, a request for a hearing and a brief explanation of the situation should be sent to:

Director
Division of Medical Assistance and Health Services
CN 712
Trenton, New Jersey 08625

10:94-8.5 Fraudulent receipt of assistance

To protect the assistance agency and the public against the commission of fraud, the policies and procedures as defined in N.J.A.C. 10:81-7.40 through 7.45 (fraudulent receipt of assistance) shall apply to the Medicaid Only program.

10:94-8.6 Reporting criminal offenses to law enforcement authorities

Investigation of new applications or investigations for redetermination of eligibility may on occasion present indications to the county welfare agency that a crime may have been committed. In such a situation, the procedures outlined in N.J.A.C. 10:81-7.46 (reporting criminal offenses to law enforcement authorities) are to be followed.

10:94-8.7 Safeguarding information

The Federal Social Security Act requires that a state must provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of public assistance. Therefore, the policies and procedures outlined in N.J.A.C. 10:81-7.30 through 7.35 (safeguarding information) apply to the Medicaid Only program.

10:94-8.8 Nondiscrimination in public assistance programs

Title VI of the Federal Civil Rights Act of 1964 (Public Law 88-352) and Section 504 of the Federal Rehabilitation Act of 1973 prohibit discrimination on the ground of race, color, national origin, or handicap in the administration of a program for which Federal funds are received. Therefore, the policies and procedures relating to those acts, as outlined in N.J.A.C. 10:81-7.36 through 7.38 (nondiscrimination in public assistance programs) are to be strictly observed.

10:94-9.2 Initial certification

(a) Certification begins for those persons and only for those persons who were in certified status in the MAA program at the close of business on June 30, 1982 and those persons that filed MAA applications on or before June 30, 1982 and whose eligibility was established in accordance with regulations and case circumstances in effect on that date. The initial certification period in MAAC consists of the remainder of the current MAA certification period (see N.J.A.C. 10:94-9.4(a)).

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

10:94-9.5 Eligibility for other programs

(a) (No change.)

(b) Referral: If eligibility is found for regular Medicaid Only, the CWA will convert the case accordingly. If potential eligibility is found for a program administered by another agency, the CWA will make referral promptly and will institute procedures for follow-up of the referral. Upon acceptance of the individual into any other program through which medical costs are met, the CWA will terminate the MAAC case.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Approval of Business Names

Adopted New Rule: N.J.A.C. 11:1-18

Proposed: January 7, 1985 at 17 N.J.R. 41(a).
Adopted: January 6, 1986 by Hazel Frank Gluck, Commissioner, Department of Insurance.
Filed: January 6, 1986 as R.1986 d.10, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17B:22-9, 17B:22-22, 17:22-6.6, 17:22-6.14, 56:1-1 et seq., 14A:2-1 et seq.

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): February 3, 1991.

Summary of Public Comments and Agency Responses:

The Department received several written comments on its proposed new rule concerning approval of business names (N.J.A.C. 11:1-18). The writers raised both substantive and technical arguments and requested clarification of certain provisions.

COMMENT: One commenter questioned the need for the proposed rule. The writer noted that the Commissioner has full authority to determine the identity and composition of any entity engaged in the insurance business, including whether the entity is an individual, partnership or corporation. It was argued, therefore, that requiring the business name of the entity to be submitted for approval would be duplicative and unjust. The commenter suggested that the rule only adds to the administrative burden placed on both the applicant and the Department, without providing a concomitant benefit to the industry or public.

Another commenter also expressed a concern that the filing and approval of business names would increase the administrative burden on the Department and would exacerbate the periodic delays and backlogs currently associated with the licensing and renewal process. This commenter recommended that the requirements of the rule be confined to new applicants.

RESPONSE: Regulation of the business names used by insurance licensees represents a proper exercise of the Commissioner's authority, and one which benefits the public by prohibiting misleading names. The standards for business names set forth at N.J.A.C. 11:1-18.4 provide objective criteria for determining the acceptability of any proposed name, and, in the Department's view, such disclosure works to the benefit of the applicant. N.J.A.C. 11:1-18.3 permits, but does not require, that the licensee obtain Departmental approval of the proposed name prior to filing with the county clerk or other state authority. Rather than creating or exacerbating delays in license issuance, the procedural and substantive requirements of this subchapter will facilitate the Department's processing of licenses.

COMMENT: Several commenters questioned the status of existing licensees under the proposal. Specifically, it was recommended that existing licensees be exempted from the requirements of the rule. It was argued that, for some licensees, achieving compliance with the rule could entail costly replacement of tangible items such as letterheads and signs, as well as the "intangible loss of its established visual identity."

RESPONSE: It was not the Department's intention to require that the business names currently used by existing licensees be submitted for approval pursuant to this subchapter. An appropriate amendment to N.J.A.C. 11:1-18.1 has been made to clarify this point. However, it is the Department's position that the requirements of this subchapter are applicable to any proposed change in or replacement of an existing business name which occurs on or after the effective date of this subchapter.

COMMENT: An agency raised several questions concerning the approval of business names. Clarification was requested with respect to: (1) how many names could be submitted for approval; (2) whether the Department would review the acceptability of various names in the order of the applicant's preference; and (3) how long an approved name would be reserved.

RESPONSE: The Department believes that by allowing an applicant to submit more than one proposed name for consideration under N.J.A.C. 11:1-18.3, the number of instances in which approval must be withheld can be kept to a minimum. N.J.A.C. 11:1-18.3(a) is being amended on adoption to provide for the submission of up to three proposed names for prior approval under this section.

The Department does not perceive any marked benefit to be derived from reviewing business names in order of preference or from reserving names approved under N.J.A.C. 11:1-18.3. In addition, instituting internal procedures to carry out such functions would impose additional administrative burdens and costs on the Department. The business name(s) submitted will be reviewed and the applicant notified of the name(s) which are acceptable. For purposes of clarification, N.J.A.C. 11:1-18.3 is being supplemented to provide for written notification by the Department of the approval of proposed business name(s).

COMMENT: One writer objected to the prohibition set forth at N.J.A.C. 11:1-18.4 on the use of certain designations such as "corporation," "associates" and "company" in a business name. It was argued that these designations, in addition to being commonly utilized by all business entities, are frequently required under various state corporation and business organization laws to indicate whether the entity is a corporation or a sole proprietorship. It was argued that compliance with the rule could expose a licensee to the possibility of violating other applicable statutes.

RESPONSE: In the Department's view, this writer has misconstrued both the purpose and focus of this section, which is to prohibit or restrict the use of certain words in a business name which may have the capacity or tendency to be misleading or deceptive in that context. These business designations are put before the public and, as some commenters have acknowledged, carry both a tangible and intangible value and significance. It is, therefore, of the utmost importance that such designations accurately convey to the public the nature and composition of the licensed entity and do not mislead the public or otherwise diminish the ability to identify the entity responsible for the performance of licensed functions.

The Department rejects the writer's assertions concerning the possible violation of other applicable laws, as a conse-

quence of effecting compliance with this rule. The business name standards contained in the rule are developed from and reflect the Department's experience in license processing. It has not been the Department's experience that conformance to these standards would place the licensee in such jeopardy. In addition, since filing of the business name with the Secretary of State or other authority is a precondition to final approval under N.J.A.C. 11:1-18.2, such an outcome seems remote.

COMMENT: The Agent and Broker Review Board recommended that a fifth standard be added to those set forth at N.J.A.C. 11:1-18.3(a), to restrict the use of any business name, which implies identification or affiliation with a federal or state entity.

RESPONSE: The Department concurs with this suggestion and has amended N.J.A.C. 11:1-18.4(c) accordingly.

Finally, as a result of internal review of the proposal, a revision has been made to N.J.A.C. 11:1-18.2(d)1, concerning the business name of a foreign corporation applying for a broker's license.

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

SUBCHAPTER 18. APPROVAL OF BUSINESS NAMES

11:1-18.1 Purpose and scope

(a) This subchapter sets forth criteria and procedures used by the Commissioner of Insurance in the approval of a business name submitted by an individual, partnership or corporation who or which is licensed to act as an agent or broker in this State and to any applicant for such a license.

1. The requirements of this subchapter shall not apply to the business name of a licensed agent or broker which had been filed with and approved by the Department prior to the effective date of this subchapter. Any subsequent change to such an approved business name shall be subject to the requirements of this subchapter.

(b) For the purposes of this subchapter, the term "business name" shall include:

1. With respect to an individual or partnership applicant or licensee, any assumed name, other than the real name(s) of the individual(s) who conduct or intend to conduct the business, as specified at N.J.S.A. 56:1-2; and

2. With respect to a corporate applicant or licensee, any corporate name as specified at N.J.S.A. 14A:2-1 et seq., including a fictitious name.

11:1-18.2 Filing of business names

(a) No licensed agent or broker may conduct insurance business under a business name, unless the name has been filed with and approved by the Commissioner pursuant to the provisions of this subchapter.

1. The approval of the business name shall be evidenced by the issuance to the licensee of a Department Notice of Correction.

(b) A business name intended for use by an applicant for a license to act as an agent or broker shall accompany the application for such license.

1. Issuance of the license to the applicant shall denote approval of the business name.

(c) The filing of a business name by an individual or partnership applicant or licensee resident in this State shall be accompanied by a certified true copy of the certificate of business name filed with the proper county clerk as required by N.J.S.A. 56:1-1 through 56:1-5.

(d) The filing of a business name by a corporate applicant or licensee shall be accompanied by a certified true copy of the corporate filing listed with the office of the Secretary of State as required by N.J.S.A. 14A:2-1 through 14A:2-4.

1. *[The requirements of (d) above shall not include any foreign corporation applying for a broker's license which has not complied with the general corporation act and obtained a license thereunder, but which has, pursuant to the provisions of N.J.S.A. 17:22-6.7 and 17:22-6.9, filed with the Commissioner a duly executed power of attorney.]* ***A foreign corporation applying for a broker's license as specified in N.J.S.A. 17:22-6.9(j) shall not be subject to the requirement of (d) above.***

(e) A business name filing submitted by a nonresident applicant or licensee shall be accompanied by a letter from the proper official of the state in which the resident license is held certifying that the applicant holds a valid license.

1. Unless such name has been specifically disapproved by the New Jersey Secretary of State, the nonresident licensee shall use the business name approved for use in the state of domicile.

(f) The filing of a business name shall be accompanied, where applicable, by the notice of approval issued by the Department pursuant to N.J.A.C. 11:1-18.3.

11:1-18.3 Prior approval of proposed business names

(a) Notwithstanding the requirements of N.J.A.C. 11:1-18.2(c) and (d), an applicant or licensee, resident in this State, may apply to the Commissioner for approval of a proposed business name before filing with the county clerk or other state authority. ***The applicant or licensee may submit up to three proposed business names for consideration pursuant to this section.*** The proposed business name*(s)* should be submitted to:

New Jersey Department of Insurance
Director of Licensing
License Division
CN 325
201 East State Street
Trenton, New Jersey 08625

(b) The Department shall, in writing, notify the applicant or licensee of its determination with respect to any business name(s) submitted for prior approval under this section.

*[(b)]***(c)* Use of a business name approved pursuant to this section shall not commence until the licensee or applicant has satisfied the applicable requirements of N.J.A.C. 11:1-18.2 and final approval has been granted as specified therein.

11:1-18.4 Standards for business names

(a) No business name shall have the capacity or tendency to be misleading or deceptive.

1. If the word "insurance" or its equivalent is contained in the name, it must be joined with such wording as "agency" or "brokerage" to distinguish the entity from an insurance company.

2. A fictitious name of a corporation shall not include any form of the word "corporation" in such name.

3. The business name of an individual proprietorship shall not include the word "associates," or other word(s) of similar import.

4. No business name shall include the word "company."

5. A business name shall not express or imply any identification or affiliation with a federal, state or other governmental

entity, including any department, division, bureau or other subdivision of such entities.*

(b) No business name shall consist of or include any franchise designation.

(a)

DIVISION OF LICENSING

Branch Offices

Adopted New Rule: N.J.A.C. 11:1-19

Proposed: January 7, 1985 at 17 N.J.R. 42(a).
Adopted: January 6, 1986 by Hazel Frank Gluck, Commissioner, Department of Insurance.
Filed: January 6, 1986 as R.1986 d.11, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:17-12 and 17B:17-13.

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): February 3, 1991.

Summary of Public Comments and Agency Responses:

Several written comments were received in reference to the proposal.

One commenter, an insurance company trade association, expressed concern over the scope of the proposed rule. It suggested that the rule should be made more explicit by placing "Agent/Broker" before "Branch Office." This change would, in the opinion of the commenter, avoid misinterpretation of the rule as applying to insurance company branch offices. The Department believes this change to be unnecessary as the proposal's scope is clearly defined at N.J.A.C. 11:1-19.1 to include,

> ". . . any person, partnership, corporation or other entity licensed by the Commissioner of Insurance as an agent or broker."

One commenter, an insurance agency, was uncertain as to what would be deemed a "branch office" and suggested that a definition of "branch office" be provided in the rule. The Department has decided to provide such a definition of branch office to N.J.A.C. 11:1-19.2(a) to guarantee a clear understanding on the part of licensees who fall within the rule's ambit. The Department has also amended this provision to clarify the meaning of the term "normal business hours" as it relates to branch office operations.

In response to internal comments, the following editorial changes were made: to assure that new branch offices are not opened until the registration process is complete, licensees shall be required to provide written notification of intent to open a branch office within 30 calendar days of its opening rather than 20 days. In addition, N.J.A.C. 11:1-19.5 has been amended to clarify the registration requirements for existing branch offices.

One commenter, an insurance agency service organization, raised several questions in regard to the proposal. First, whether the $5.00 fee is a one-time fee. The registration fee is payable each time a branch office certification must be obtained. Second, what information on the registration form, besides the address, must be continually updated. N.J.A.C. 11:1-19.2(d) clearly states that it shall be the licensee's responsibility to "notify the Department of **any changes** in the information provided. . ." in the application (emphasis added). Third, whether the Department must be notified each time a different licensee is assigned to a branch office. Pursuant to N.J.A.C. 11:1-19.3, it is sufficient that a licensed individual is assigned to and present at the branch office during normal business hours; there is no requirement that the Department be notified each time there is a staffing change. In connection therewith, the Department has amended these provisions to clarify that intent. Fourth, the commenter wanted to know how the Department intends to treat a location at which brochures are available where no licensees are present. The Department believes that inclusion of a definition of "branch office" will clarify that this type of operation is outside the scope of the rule. Finally, it is asked whether branch offices that presently have "certification" automatically comply with the rule. This concern is addressed by the clarification to N.J.A.C. 11:1-19.5 discussed above.

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

SUBCHAPTER 19. BRANCH OFFICES

11:1-19.1 Scope

This subchapter applies to any person, partnership, corporation or other entity licensed by the Commissioner of Insurance as an agent or broker. It is not intended to supersede requirements contained in any other applicable rule or regulation.

11:1-19.2 Registration of branch offices

(a) All licensees of the Department of Insurance must provide the Commissioner of Insurance with written notification of intent to open a branch office within *[20]* ***30*** calendar days prior to the opening of any branch office. ***A branch office shall be any place other than the principal office of the licensee where the business of insurance is conducted. A branch office must be open to the public during normal business hours. For the purposes of this subchapter, normal business hours shall mean business hours that afford the public reasonable access to the branch office. The business hours of the office shall be posted, published or otherwise displayed by the licensee in a manner reasonably calculated to inform the public of same.***

(b) Upon receipt of the notification of intent to open a branch office, the Department will forward a branch office registration application, the form of which shall be prescribed by the Commissioner. The registration application shall be completed in full and returned, with a $5.00 registration fee, to the Department within 10 days.

(c) Upon receipt of a properly completed branch office registration application along with the fee, the Department shall issue a Branch Office Certification.

(d) It shall be the responsibility of the licensed agent or broker to notify the Department of any changes in the information provided in the branch office registration application within 20 calendar days of such change.

(e) All notifications of intent to open branch offices and branch office registration forms shall be sent by certified mail,

return receipt requested, or shall be delivered personally, to the:

New Jersey Department of Insurance
License Division
201 East State Street
CN 325
Trenton, New Jersey 08625

11:1-19.3 Licensees

(a) No branch office may be opened or continue to operate unless at least one licensed insurance agent, broker or solicitor is permanently assigned to that office and present during normal business hours.

1. If the licensee is an individual agent or broker, *[a licensed]* ***the licensee or his or her authorized*** solicitor shall be permanently assigned to the branch office and present during normal business hours.

2. If the licensee is a corporation or partnership, an active officer, active member or ***authorized*** solicitor shall be permanently assigned to the branch office and present during normal business hours.

11:1-19.4 Compliance

Failure to comply with the requirements of this subchapter shall constitute violation of N.J.S.A. 17:22-6.16(a) and (h) and 17B:22-27(a)(1) and (12).

11:1-19.5 Existing branch offices

It shall be the responsibility of all licensees who have opened branch offices prior to the effective date of this subchapter and continue to operate such offices to be in compliance with the branch office registration requirements contained in this subchapter not later than the date upon which their license is next renewed. ***Compliance shall consist of forwarding a copy of an existing branch office certification or acquiring a certification pursuant to the procedures prescribed above.***

(a)

DIVISION OF ADMINISTRATION

General Requirements
Verification and Claim Form Statements

Adopted New Rule: N.J.A.C. 11:16

Proposed: January 7, 1985 at 17 N.J.R. 47(a).
Adopted: January 7, 1986 by Hazel Frank Gluck, Commissioner, Department of Insurance.
Filed: January 7, 1986 as R.1986 d.13, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:33A-6.

Effective Date: February 3, 1986.
Operative Date: June 3, 1986
Expiration Date pursuant to Executive Order No. 66(1978): February 3, 1991.

Summary of Public Comments and Agency Responses:

The Department received hundreds of comments on the proposed new rule N.J.A.C. 11:16. All but a dozen or so of these comments objected to the requirement that the verification statement be sworn before a notary. On November 12, 1985, the Governor signed a bill (P.L. 1985 c.358) amending the New Jersey Fraud Prevention Act by deleting the words "under oath" from the description of the verification statement. The adopted rule reflects this statutory change.

Several insurers generally expressed the view that the rule would increase costs and was a step backward in the progression towards more efficient processing of insurance claims. In addition, these writers felt the rule was unduly cumbersome and would have no effect on insurance fraud.

The requirement for verification statements and claim form warnings is in the New Jersey Fraud Prevention Act. The rule attempts to implement the statutory directives in a manner that is as streamlined as possible while still protecting insureds.

One commenter thought that on the whole the rule was a positive step in combating insurance fraud in New Jersey and agreed with the rule's format.

COMMENT: The wording of the verification statement does not allow for procedures performed in a doctor's office but not by a doctor. For example, x-rays may be performed by a licensed x-ray technician. One writer suggested wording for modification of the verification statement.

RESPONSE: The Department agrees with this comment and has incorporated the language suggested by the writer. Accordingly, the verification statement has been amended to cover treatments, etc. provided by an employee under the supervision of the person signing the statement.

COMMENT: Many providers, especially in the medical field, use computer and telephone billing without any claim forms. Requiring verification statements for these claims will increase costs.

RESPONSE: The statute requires that providers of materials or services seeking payment that will be reimbursed by an insurer must verify that the materials or services were necessary and were in fact provided. The statute does not have any exclusions. Therefore, the requirement applies regardless of how the billing is done.

COMMENT: Insurers should have flexibility in selecting the warning notice to go on claim forms. Warning language from the NAIC Model Insurance Fraud Statute was suggested.

RESPONSE: The suggested language for the warning statement states that filing a false claim statement is a felony. Under New Jersey's Insurance Fraud Prevention statute that is not necessarily the case. Further, this comment drew attention to the warning statement alternatives listed in the rule. Upon review, the Department has determined that two of the three statements are also inconsistent with the New Jersey statute. For that reason, only the warning statement included in the New Jersey statute is acceptable. The rule has been amended to reflect this change.

COMMENT: The requirement at N.J.A.C. 11:16-1.4(a) that insurers notify insureds of the requirement for the verification statement within 10 days of receiving notification of claim will cost insurers in New Jersey $100,000. Another writer suggested the notification could be included on claim or estimate forms.

RESPONSE: The notification requirement of N.J.A.C. 11:16-1.4(a) was drafted to coordinate with the Unfair Claims Settlement Practices regulation, specifically N.J.A.C. 11:2-17.6(b) which reads:

> "Every insurer, upon receiving notification of claim shall, within ten working days, acknowledge receipt of such notice unless payment is made within such period of time."

Since this requirement already exists, it should not cost insurers that much to include the consumer notice attached as Appendix B to the rule. The writer claiming the $100,000 cost figure gave no explanation for how the number was reached. N.J.A.C. 11:2-17.6(c) states that providing claim forms satisfies the acknowledgement requirement. Therefore, inclusion of the consumer notice on claim forms would meet the rule requirement.

COMMENT: Does the definition of provider include auto body shops? A list of types of providers should be added to the definition.

RESPONSE: The statute requires verification statements from all "persons or practitioners" who seek payment for materials or services that are to be reimbursed by an insurer. Auto body shops qualify as persons and also as practitioners since they are licensed by the state and provide services compensated by insurance proceeds. The Department does not believe that a list of types of providers would be beneficial.

COMMENT: There should be a 120 day lead in period before the rule becomes effective to allow those affected by the rule to prepare for its implementation.

RESPONSE: The Department intends to make the rule effective 120 days after the effective date of the application. Notice of this fact was included in the proposal.

COMMENT: A pharmacist would not be able to determine whether a prescription was "necessary" as required by N.J.A.C. 11:16-1.3(b)1.

RESPONSE: The writer misunderstands the requirement of the rule. A pharmacist would certify that a prescription was necessary if a valid doctor's prescription form was presented and "provided" if the medicine prescribed was actually dispensed. The rule does not require that a pharmacist determine whether a prescription written by a doctor was in fact necessary.

COMMENT: The requirement at N.J.A.C. 11:16-1.3(c) that the name and address of the claimant and provider appear on the bill for services will raise costs because many standardized forms do not now furnish that information.

RESPONSE: The Department does not believe that the inclusion of the names and addresses of provider and claimant on the bill for services will raise costs significantly. In addition, this information is helpful to the insured in keeping their records.

COMMENT: Is the definition of insurer in the rule intended to include hospital and dental service plans?

RESPONSE: The Department interprets the New Jersey Insurance Fraud Prevention Act as applying to insurance companies, hospital, medical and dental service corporations as well as dental plan organizations. The definition of insurer in the rule has been amended to clarify inclusion of these entities.

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

SUBTITLE L
INSURANCE FRAUD PREVENTION

CHAPTER 16
GENERAL REQUIREMENTS

SUBCHAPTER 1. VERIFICATION AND CLAIM FORM STATEMENTS

11:16-1.1 Scope; definitions

(a) This subchapter applies to all insurers *[transacting the business of insurance]* in the State of New Jersey and to all persons or practitioners, as defined in N.J.S.A. 17:33A-3, seeking payment for services or materials from insurers.

(b) ***For the purpose of this subchapter,*** "***[I]****i*nsurer" means any person, corporation, association, partnership, company, fraternal benefit society, eligible unauthorized surplus lines insurer and other legal entity engaged as an indemnitor or contractor in the business of insurance ***or any hospital service corporation as defined at N.J.S.A. 17:48-1, medical service corporation as defined at N.J.S.A. 17:48A-1, health service corporation defined at section 1 of P.L. 1985, chap. 236, dental service corporation as defined at N.J.S.A. 17:48C-2 and dental plan organization as defined at N.J.S.A. 17:48D-2****. *[For the purposes of this subchapter, "i]*****"I*nsurer" shall ***also**** include any individual, corporation, association, partnership or other legal entity authorized to represent an insurer with respect to a claim.

(c) "Provider" means a person or practitioner, as defined in N.J.S.A. 17:33A-3, who furnishes materials or services for which reimbursement from an insurer may be sought.

11:16-1.2 General requirements

(a) No provider shall seek payment for services or materials that will be reimbursed all or in part by an insurer before verifying *[under oath]* as required in N.J.A.C. 11:16-1.3 that the services or materials were necessary and were, in fact, provided.

(b) The provider shall make a reasonable effort to discover from any person requesting services or materials whether an insurance claim has been or will be filed.

11:16-1.3 Form and content of verification

(a) The verification shall be a*[n affidavit sworn before a notary.]* ***certification.****

1. The verification shall be attached to or included in the provider's bill for services and materials.

2. The verification may be on a form furnished by the insurer or provider, but it, together with the bill, must contain the information detailed in (b) and (c) below. An acceptable example of a verification may be found at the end of this subchapter as Appendix A.

(b) Verifications required under this subchapter shall:

1. Contain a statement that the services and materials furnished were necessary and were, in fact, furnished by the provider ***or by the provider's employee at the provider's direction and under the provider's supervision****;

2. *[Be sworn and subscribed to by the provider before a notary public of the State of New Jersey or other individual authorized to take oaths pursuant to N.J.S.A. 41:2-1;]* ***Be certified to by the provider pursuant to New Jersey Court Rules R.1:4-4.****

3. Contain the claim form warning statement required in N.J.A.C. 11:16-1.5(a); and

4. Contain a statement that the provider is aware that payment by the insurer or recourse against the insured is conditioned upon furnishing the required verification.

(c) The bill for services or materials must contain:

1. Name and address of the provider of goods or services;

2. Name and address of claimant;

3. Identification and description of the type of services performed or materials provided; and

4. Dates upon which the services were rendered or materials furnished.

11:16-1.4 Notification to claimant

(a) Every insurer, upon receiving notification of claim, shall, within 10 working days of such notice, provide the claimant with the written notice found at the end of this subchapter as Appendix B.

1. In complying with this subsection, an insurer may include the notice with any written acknowledgment of claim or provision of claim forms furnished pursuant to N.J.A.C. 11:2-17.6(b) and (c).

2. A copy of the written notice shall be maintained in the claim file.

(b) Whenever notification of a claim is given other than in writing, an insurer, agent or broker shall at that time inform the claimant that providers of materials or services must furnish with their bill a provider's verification *[under oath]* that the services or materials were necessary and provided.

1. The informational requirement of this subsection shall be in addition to the insurer's furnishing of a written notice as specified in (a) above.

2. The insurer's, agent's or broker's records shall reflect provision of this information in accordance with standards applicable to pertinent communications under N.J.A.C. 11:2-17.

11:16-1.5 Statement of liability for fraud on claim forms

(a) Insurers *[transacting the business of insurance in New Jersey]* must ***place*** *[elect one of]* the following warning*[s to appear]* on all claim forms:

[1.] "Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties."

*[2. "Any person who knowingly and with intent to defraud any insurance company or other persons, files a statement of claim containing any materially false information, or concerning any fact, material thereto, commits a fraudulent insurance act, which is a crime, subject to criminal prosecution and civil penalties."

3. "Warning: Any person who knowingly and with the intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any material fact thereto, is subject to criminal and civil liability under state and/or federal law."

(b) A claim form warning other than one of the above must be approved in writing by the Commissioner.]*

Appendix A

*[AFFIDAVIT]***CERTIFICATION***/VERIFICATION

*[State of New Jersey
County of]*

[Before me this day personally appeared _____ who, being sworn according to the law, upon his oath, deposes and says:]

I have read the attached report and bill for services and/or materials rendered to _____. I declare that the treatments, services, or materials rendered or provided by me ***or provided by my employee at my direction and under my supervision*** were reasonable, necessary, and were, in fact, furnished and provided on the dates set forth.

*[Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

I understand that any person who knowingly and with intent to defraud any insurance company or other persons, files a statement or claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact, material. thereto, commits a fraudulent insurance act, which is a crime, subject to criminal prosecution and civil penalties.]*

I understand that any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.

I further understand that the furnishing of this verification is a condition precendent to payment by the insurer or recourse against the insured person to whom, or for whom, the services, treatments, or materials were rendered or supplied.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

_____
SIGNATURE OF ***PROVIDER****[PERSON MAKING AFFADAVIT]*

_____
PRINT NAME AND TITLE OF PROVIDER

_____
Date

*[Sworn to and subscribed to

Before me this _____ day of _____
_____, 19____

_____
Signature of Notary

My commission expires:_____]*

Appendix B

CONSUMER NOTICE

VERIFICATION REQUIRES WITH BILLS TO BE REIMBURSED

No one may ask you to pay for any materials or services furnished in conjunction with this claim, unless they give you a*[n affidavit]* ***certification*** verifying that the materials or services were necessary and provided. The *[affidavit]* ***certification*** must be included in or attached to their bill.

LABOR

(a)

THE COMMISSIONER

Contributions, Records and Reports Remuneration

Adopted Amendment: N.J.A.C. 12:16-4.8

Proposed: December 2, 1985 at 17 N.J.R. 2850(a).
Adopted: January 8, 1986 by Charles Serraino, Commissioner of Labor.
Filed: January 13, 1986 as R.1986 d.23, **without change.**

Authority: N.J.S.A. 43:21-1 et seq., specifically 32:21-19(i)(1)(A).

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): April 1, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

12:16-4.8 Other remuneration
(a)-(b) (No change.)
(c) Money value for board and room, meals and lodging, shall be treated as follows:
1. (No change.)
2. The Controller shall establish rates for board and room, meals and lodging furnished in addition to, or in lieu of, money wages, unless the employer can establish different costs determined by generally accepted accounting principles, as follows:

i. Full board and room, weekly	$72.00
ii. Meals per day	8.20
if less than 3 meals per day, the individual meals shall be valued as follows:	
Breakfast (meals served between 12:01 A.M. and 11:00 A.M.)	2.40
and	
Lunch (meals served between 11:00 A.M. and 4:00 P.M.)	2.40
and	
Dinner (meals served between 4:00 P.M. and 12:00 P.M.)	3.40
and	
iii. Lodging per week	31.00

(b)

Contributions, Records and Reports Temporary Disability Payments

Adopted New Rule: N.J.A.C. 12:16-4.10

Proposed: December 2, 1985 at 17 N.J.R. 2850(b).
Adopted: January 8, 1986 by Charles Serraino, Commissioner, Department of Labor.
Filed: January 13, 1986 as R.1986 d.21, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 43:21-1 et seq., specifically 43:21-19(i)(1)(A).

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): April 1, 1990.

Summary of Public Comments and Agency Responses:
No comments received with respect to the proposal. However, upon adoption the Department has made a technical change in subsection (a) to comport with the statutory provisions of the Temporary Disability Law (N.J.S.A. 43:21-39a).

Full text of the adoption follows (addition shown in boldface with asterisks ***thus***; deletion shown in brackets with asterisks *[thus]*).

12:16-4.10 Temporary disability payments
(a) Payments made to employees under an approved Private Plan shall be considered as taxable remuneration, if payments are for a period of *[less than seven]* ***seven or less*** consecutive days following the date of disability.
(b) Payments made for periods after the seventh consecutive day following the date of disability shall not be considered as taxable.
(c) If the period of disability extends to the twenty-second day of disability and payment is made for that twenty-second day, then the first seven days, referred to in (a) above would not be considered taxable.

(a)

Contributions, Records and Reports Due Dates

Adoption Amendment: N.J.A.C. 12:16-5.2

Proposed: December 2, 1985 at 17 N.J.R. 2851(a).
Adopted: January 8, 1986 by Charles Serraino, Commissioner of Labor.
Filed: January 13, 1986 as R.1986 d.22, **without change.**

Authority: N.J.S.A. 43:21-1 et seq., specifically 43:21-19(i)(1)(A).

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): April 1, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

12:16-5.2 Due dates

(a) Employers' contributions shall be paid and contribution reports filed on a quarterly basis as follows:

Quarter Ending	Due Date
March 31	April 30
June 30	July 30
September 30	October 30
December 31	January 30

(b) Notwithstanding (a) above, the Controller is authorized to require an employer or employers to file contribution reports and pay contributions on a monthly or other basis when, in his discretion, he considers it necessary to do so.

(b)

DIVISION OF UNEMPLOYMENT AND TEMPORARY DISABILITY INSURANCE

Offset of Unemployment Insurance Benefits by Retirement and Pension Income

Readoption with Amendment: N.J.A.C. 12:17-11

Proposed: November 18, 1985 at N.J.R. 2736(a).
Adopted: December 27, 1985 by Charles Serraino, Commissioner, Department of Labor.
Filed: December 30, 1985 as R.1985 d.718, **without change.**

Authority: N.J.S.A. 43:21-1 et seq., specifically 43:21-11.

Effective Date: December 30, 1985 for readoption; February 3, 1986 for amendment.
Expiration Date pursuant to Executive Order No. 66(1978): December 30, 1990.

Summary of Public Comments and Agency Responses:

One comment was received from Assemblyman John A. Rocco. He requested that the rule be amended to disregard lump-sum pension payments in those situations where the individual rolls over the pension amount into an IRA or other type of pension fund.

In 1984, the Department recognized the need to treat individuals receiving lump-sum pension payments in a more equitable manner. Previously, the calculation of the monthly pension amount was made by dividing the lump-sum amount by twelve. This formula was changed with the adoption of N.J.A.C. 12:17-11.3 on January 3, 1984 which provides that the lump-sum pension amount would be pro-rated over the life expectancy of the individual at the time of separation from employment. The Department's position is that this rule provides for consistent and equitable treatment of individuals receiving pensions under a lump-sum plan or on a periodic basis and that the rule accurately reflects the intent of federal law.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 12:17-11.

Full text of the adopted amendment to the readoption follows.

12:17-11.2 Amount of reduction

(a) For weeks of unemployment beginning on or after January 1, 1981, the amount of any such reduction shall be determined by taking into account contributions made by the individual for the pension, retirement or retired pay, annuity or other similar periodic payment. The following schedule will apply.

1. If such payment is made under a plan to which the individual did not contribute, the amount of benefits payable to such individual for any week will be reduced by an amount equal to the amount of such pension, retirement or retired pay, annuity or other payment which is reasonably attributable to such week provided that the reduced weekly benefit amount will be computed to the next lower multiple of $1.00 if not already a multiple thereof.

2. If such payment is made under a plan to which the individual contributed (but less than 100 percent), the amount of benefits payable to such individual for any week will be reduced by an amount equal to 50 percent of the amount of such pension, retirement or retired pay, annuity, or other payment which is reasonably attributable to such week, provided that the reduced weekly benefit amount will be computed to the next lower multiple of $1.00 if not already a multiple thereof.

3. If such payment is made under a plan to which the individual contributed 100 percent, the amount of benefits payable to such individual for any week shall not be reduced.

LAW AND PUBLIC SAFETY

(a)

BOARD OF MEDICAL EXAMINERS

Termination of Pregnancy

Adopted Repeal and New Rule: N.J.A.C. 13:35-4.2

Proposed: November 18, 1985 at 17 N.J.R. 2738(a).
Adopted: January 8, 1986 by New Jersey State Board of Medical Examiners, Edward W. Luka, M.D., President.
Filed: January 13, 1986 as R.1986 d.25, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 45:9-2.

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): August 1, 1988.

Summary of Public Comments and Agency Responses:

Many thoughtful comments were received regarding the proposed rule establishing safety-related circumstances for terminations of later stages of pregnancy. Many constructive suggestions were received from the New Jersey State Department of Health, most of which were adopted in the form of clarifications. Useful comments were also received from Planned Parenthood Affiliates of New Jersey. Comments were also received from Medical Care Center and Metropolitan Medical Associates (both of which are licensed by the Department of Health as ambulatory care facilities). Comments were also received from the Women't Litigation Clinic of Rutgers School of Law and from a representative of an organization entitled New Jersey Right-to-Life Committee, and from other private persons.

Among the suggestions adopted by the Board is the clarification of definitional term describing stages of pregnancy as "weeks from start of last menstrual period" which is the common definition used in the profession; other proposed terminology was rejected as atypical. Certain paragraphs which had appeared in the form of guidelines attached to the rule were incorporated into the rule sections themselves to enhance the ability of the Board to enforce the new rule, but paragraphs 5 and 6 of subsection (f) continue to utilize guidelines since the Board deemed their detail to be inappropriate in a rule. The Board made clear that where change is later made in any of the guidelines, advance notice shall be sent to each physician registered with the Board to perform more advanced termination procedures in a clinic setting. Specifically within subsection (f), the Board clarified that the certification submitted by a physician planning to do more advanced procedures shall be signed also by the medical director confirming the physician's eligibility, and the training to which the medical director is attesting must also be documented in the personnel file maintained for that physician. The prior rule had required the operating physician to have admitting privileges at a nearby licensed hospital so as to facilitate any follow-up care needed by a patient in the event of complications. That section was clarified at the suggestion of the Department of Health to require admitting and surgical privileges, a concept the Board had deemed implicit in the earlier version. For the same reason, the Board deleted as unnecessary a requirement that the LACF have a specific agreement with a hospital, since the operating surgeon must personally have surgical privileges there. The Board agree that since much of current experience may have been gained in a clinic setting, such experience may be utilized in credential review as an addition or alternative to prior hospital experience with the procedures in question.

Regarding disposal of tissue, the Department of Health requested a specific reference to its rule on the subject; that request was accepted only in part since the Department of Health Rule applies solely to licensed ambulatory care facilities, whereas the Medical Board Rule applies to terminations of pregnancy done at any stage including the first trimester when the procedure is not required to be done in a licensed clinic. Within the guidelines section, clarification has been made regarding the nature of physical examination which must be performed by a physician, in contrast to examination which may be performed by other personnel. With regard to significant medical, gynecological, psychological or hematological abnormalities, the Board clarified that the primary determination and assessment is made by the physician on the premises who must decide whether the patient is suitable for a termination procedure at that location. Some commenters objected to a requirement that all patients more than 14 weeks LMP have ultrasonography to determine their stage of pregnancy. The Department of Health urged that the present provision be retained as well as clarification that ultrasonography must be performed for pregnancies less than 14 weeks where there is some problem. The Board determined to adopt the wording as proposed, considering the newness of doing non-hospital advance procedures in New Jersey, at least until there is adequate data to show that physicians are making accurate assessments as to the stage of pregnancy and the likelihood of an uncomplicated termination procedure in an out-patient setting.

The Board rejected certain suggestions as unnecessary or inappropriate at this time, including the following: No reason was offered to support one suggestion that Medical Directors of existing LACFs should automatically be given permission to do late terminations "based on their experience and expertise." Since the writer remarked that there was already a limited number of gynecologists able to perform such procedures, the Board finds there is all the more reason to make appropriate inquiry to assure that whoever does apply does in fact have the training and recognized skill to perform such procedures. One writer objected to a rule particularly regulating terminations of pregnancy when there are not currently rules regulating all other forms of surgeries. The Board rejects this criticism since a combination of special factors warrants particular attention given to it to promote the safety of those patients who comprise its special population. This type of surgery is especially likely to involve the young, the poor, and the uneducated who commonly do not have the degree of family involvement and insurance coverage typical of most other types of surgeries. The Board also rejected the suggestion that an LACF be required to have only one doctor on staff with hospital privileges. This was deemed inappropriate since, if complications arise for a given patient, no help would be available if the only doctor with hospital privileges is unavailable, or has resigned, or has lost hospital privi-

leges for any reason. The Board deems it essential that the doctor actually performing the procedure be ready and able to follow through with at least the minimum necessary care in the event of complications. For the same reason, the Board rejected the suggestion that the operating physicians not be required to have their admitting privileges at nearby hospitals. The welfare of the patient requires that the operating surgeon have privileges at a hospital near the LACF where the procedure is performed.

One writer sought more detail about the review process. The Board does not find it necessary to include more detail at present regarding review time for physician credentials. As there is at present little experience with late stage procedures, physicians submitting such applications will be expected to demonstrate the extent of their experiences consistent with the safety needs of their potential patients.

The Board rejects, at least for the present, the suggestion that both the Board and the Department of Health use the same statistical report form. While that suggestion is certainly worthy of consideration, the two agencies have different purposes and there is no need to delay implementation of the rule while the two agencies determine the commonality of information required for each of them; however, that suggestion will be given particular consideration and can be implemented in the future.

The Board rejected a criticism from an attorney that the Board should not have excluded saline and prostaglandin procedure in non-hospital settings. The Board notes that not a single other writer and no physician or administrator of a licensed clinic criticized these exclusions or urged that these procedures be permitted in clinics. The Board has reviewed extensive literature in the professional journals which describe the significant risks of both types of abortions, especially in an outpatient setting, and no evidence whatsoever has been presented to support permitting them in a clinic setting. The same writer threatened litigation because the requirements for being licensed as an ambulatory care facility by the Department of Health are alleged to be "quite elaborate" and would therefore allegedly present obstacles to outpatient second-trimester terminations similar to hospital-only laws. The Board notes that there are seven licensed clinics of this nature presently in this State and none has objected to the Board about the purported obstacles; nor has any physician complained that the requirements were unreasonable. The same writer criticized the Board for requiring that a physician be Board-certified by the American Board of Obstetrics and Gynecology. The Board points out that the rule in fact requires that the physician be Board-certified or "Board-eligible" and the Board finds such minimum qualifications for this surgery to be eminently reasonable in the public interest. It should also be noted that this requirement is applicable only to physicians planning to do post-19 week procedures, which carry considerably greater risks. The same non-physician complains that the Board requirements are too vague regarding when a patient must be referred to a hospital and regarding the content of certain contraindications to a clinic procedure such as acute infections, and patient unable to cooperate and certain other terminology. The Board finds these criticisms to be without merit as the terminology is common in the profession and well understood; no professional offered any criticism of it.

The New Jersey Right-to-Life Committee contends that insufficient information was presented to the federal District Court regarding the continued appropriateness of the prior Board rule on this subject; the Board rejects this statement as inaccurate, and the initial decision of the federal court clearly recognized the risks of later stage procedures. However, the Court also suggested that the Board consider such restrictions as would appear to adequately protect the public in light of current experience. Despite the urgings of some commenters, the Board may not prohibit a procedure which in itself is otherwise lawful; the Board may only impose conditions which are reasonably related to the goal of promoting safety to the patient. To the extent that clinic procedures are not significantly riskier than hospital procedures, the Board rule establishes those conditions. To assure the closest monitoring of any change in risk factors the Board will inspect the reports which must be prepared monthly by each LACF where advanced procedures will be done. If any significant problems are found, the Board has authority to seek adoption of emergency measures to protect the public.

The same commenter referred to a newspaper account regarding a "clinic" in Hudson County where a person was alleged to have died. In fact, that office was not a licensed clinic, and there was no death. The same writer requested permission to present to the Board testimony of physicians to demonstrate the danger of surgical abortions. That opportunity has been afforded to all interested parties during this public comment period, and the Board has carefully considered all information presented. No information has been submitted of the nature suggested by the writer. The Administrative Procedure Act permits persons to submit at any time significant information which may affect an existing rule; at such time as new information is submitted the Board will give it careful consideration.

In summary, the quantity of information available on the subject of this rule proposal is insufficient to ascertain a current "standard of practice in the profession" as that term is usually used. But enough information is available from responsible sources to warrant a trial expansion of the prior Board rule under the protective conditions established in the proposal. For these reasons, the former text of the rule N.J.A.C. 13:35-4.2 is repealed and the new text, as modified after receipt of the public comments, is hereby adopted.

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

13:35-4.2 Termination of pregnancy

(a) This rule is intended to regulate the quality of medical care offered by licensed physicians for the protection of the public, and it not intended to affect rules of the Department of Health establishing institutional requirements. To the extent that rules of the two agencies may overlap, the Medical Board recognizes and relies upon the regulator procedures of the Department of Health in establishing minimum acceptable standards for non-physician personnel, equipment and resources, the adequacy of the physical plant of the facility in which surgical procedure shall be performed, and the facility's interrelationship with an adequate network of health care-related resources such as ambulance service, etc.

(b) The termination of a pregnancy at any stage of gestation is a procedure which may be performed only by a physician licensed to practice medicine and surgery in the State of New Jersey.

(c) Provision of this rule referring to stage of pregnancy shall be in terms of ***weeks from start of last menstrual period or*** "weeks LMP." For example, the state of pregnancy at 12

weeks' gestational size, as determined by a physician, is the equivalent of 14 weeks from the first day of the last menstrual period (LMP).

(d) After 14 weeks LMP, any termination procedure other than dilatation and evacuation (D & E) shall be performed only in a licensed hospital.

(e) ***15 weeks through 18 weeks LMP*:** After 14 weeks LMP and through 18 weeks LMP, a D & E procedure may be performed either in a licensed hospital or in a licensed ambulatory care facility (referred to herein as LACF) authorized to perform surgical procedures in accordance with Department of Health chapter N.J.A.C. 8:33A. The physician may perform the procedure in an LACF which shall have a Medical Director who shall chair a Credentials Committee. The Committee shall grant to operating physicians practice privileges relating to the complexity of the procedure and commensurate with an assessment of the training, experience and skills of each physician for the health, safety and welfare of the public. A list of the privileges of each physician shall contain the effective date of each privilege conferred, shall be reviewed at least biennially, and shall be preserved in the files of the LACF.

(f) ***19 weeks through 20 weeks LMP*:** A physician planning to perform a D & E procedure after 18 weeks LMP and through 20 weeks LMP in an LACF shall first file with the Board a certification ***signed by the Medical Director*** that the physician meets the eligibility standards set forth in 1 through 7 below and shall comply with its requirements and the current guidelines of the Board interpreting the rule.

Rule provisions for which guidelines have been established are marked with an asterisk. Those guidelines, which shall be available from the Board, shall be based upon medical standards and practices which are deemed to promote the health and safety of patients receiving advanced D & E procedures in a non-hospital setting. ***Advance notice of any change in guidelines shall be sent to each physician certified pursuant to this rule.*** *[Rule provisions for which guidelines have been established are marked with an asterisk.]*

1. The physician is certified or eligible for certification by the American Board of Obstetrics-Gynecology or the American Osteopathic Board of Obstetrics-Gynecology, and the physician satisfactorily completes at least 50 hours of Continuing Medical Education each year in obstetrics-gynecology.

2. The physician has admitting ***and surgical*** privileges at a nearby licensed hospital which has an operating room, blood bank, and an intensive care unit.*[*]* ***The hospital shall be accessible within 20 minutes driving time during the usual hours of operation of the clinic.***

3. The procedure shall be done in a location which is designated by the Department of Health as a licensed ambulatory care facility (LACF) authorized to perform surgical procedures as in (e) above.*[*]* ***The LACF shall be licensed pursuant to N.J.A.C. 8:33A and 8:43A as an ambulatory care facility authorized to perform surgical procedures. The facility shall be in current and good standing at all times when surgical procedures are performed there. The LACF shall have a written agreement with an ambulance service assuring immediate transportation of a patient at all times when a patient has been admitted for surgery and until the patient has been discharged from the recovery room.***

4. The procedure shall be done in an LACF which shall have a Medical Director and a Credential Committee which have duly evaluated the training, experience and skill of the physician at continuous and successive levels of complexity of the D & E procedure in pregnancies advancing in stages from 18 weeks LMP through 19 weeks LMP through 20 weeks LMP, and the physician has been granted successive practice privileges consistent with management of the increased risk to the health and safety of the patient at that stage *[.*]* ***documented in the personnel file maintained for that physician.*** (Where the applicant physician is also the Medical Director, the physician shall submit a certificate from the Administrator or Chief of Department of a hospital ***or the Medical Director of an LACF*** where the applicant has been evaluated and credentialed in a comparable manner.) ***The physician new to the LACF shall have his or her operating technique evaluated initially and at least yearly by the Medical Director and his or her designee who shall possess appropriate experience with D & E procedures at least as advanced as those for which the applicant physician seeks approval. The applicant shall be evaluated during that number of procedures which shall be adequate to achieve a sufficient professional skill, and the evaluation procedure shall be documented in the personnel file maintained for that physician. The Medical Director shall agree to review the charts of all patients who suffer complications and in addition shall review charts at random, and shall calculate the complication rate of each physician.***

5. The physician shall perform the procedure only on a patient who has been examined and found to be within the eligibility criteria established for advanced D & E procedures in the LACF setting.*

6. The procedure shall be performed in an LACF providing adequate staff support and resources for the operative procedure as well as interim follow-up and post-operative care, and where a physician is available and readily accessible 24 hours/day to respond to any postoperative problem.*

7. The physician shall cooperate with the Medical Director to maintain contemporaneous and cumulative statistical records demonstrating the utilization and safety record of each stage procedure and of each surgeon. Said records shall be available for inspection by the Board and copies shall be submitted to the Board semi-annually.*[*]* ***These records shall include the following information, and data shall be maintained in records compiled monthly, but individual patients comprising the lists shall be identified only by date and by initials and/or case number:**

i. number of patients who received termination procedures;

ii. number of patients who received laminaria or osmotic cervical dilators who failed to return for completion of the procedure;

iii. number of patients who reported for postoperative visits;

iv. number of patients who needed repeat procedures;

v. number of patients who received transfusions;

vi. number of patients suspected of perforation;

vii. number of patients who developed pelvic inflammatory disease within two weeks;

viii. number of patients who were admitted to a hospital within 2 weeks of the procedure;

ix. number of patients who died within 20 days.

Subparagraphs ii. through ix. above shall be summarized by number and percentage of monthly total for post-18 week procedures. The Board shall inspect such reports monthly for the first five months and at such further monthly intervals as it deems necessary.*

(g) ***After 20 weeks.*:** A physician may request from the Board permission to perform D & E procedures in an LACF and after 20 weeks LMP. Such request shall be accompanied by proof, to the satisfaction of the Board, of superior training and experience as well as proof of support staff and facilities adequate to accommodate the increased risk to the patient of such procedure.

(h) The physician shall make suitable arrangements to insure that all tissues removed shall be properly disposed of by submission to a qualified physician for pathologic analysis or by incineration or by delivery to a person/entity licensed to make biologic and/or tissue disposals in accordance with law including *[applicable]* rules of the Department of Health ***applicable to an LACF.***

GUIDELINES

Following are interpretations of the specified rule sections.

[(f)2. The hospital shall be accessible within 20 minutes driving time during the usual hours of operation of the clinic. There shall be a written agreement by the hospital that LACF patients needing hospitalization shall be accepted.]

[3. The LACF is licensed pursuant to N.J.A.C. 8:33A and 8:43A as an ambulatory care facility authorized to perform surgical procedures. The facility shall be in current and good standing at all times when surgical procedures are performed there. The LACF shall have a written agreement with an ambulance service assuring immediate transportation of a patient at all times when a patient has been admitted for surgery and until the patient has been discharged from the recovery room.]

[4. The physician new to the LACF shall have his/her operating technique evaluated initially and at least yearly by the Medical Director or his/her designee who shall possess appropriate experience with D & E procedures at least as advanced as those for which the applicant physician seeks approval. The applicant shall be evaluated during that number of procedures which shall be adequate to achieve a sufficient professional skill, and the evaluation procedure shall be documented in the personnel file maintained for that physician. The Medical Director shall agree to review the charts of all patients who suffer complications and in addition shall review charts at random, and shall calculate the complication rate of each physician.]

5. To maximize the likelihood of safe surgeries, the physician shall perform the procedure only in an LACF which has established a list of eligibility-ineligibility criteria. The physician shall require that an adequate medical history be obtained. In addition, there shall be specific inquiry on usage of drugs, whether prescribed or obtained in any other manner; the identify, quantity and last time of usage shall be recorded and brought to the attention of the surgeon. ***The patient's weight, temperature and blood pressure shall be recorded.***

A physical examination shall be performed, ***by a physician,*** which will typically include *[weight, temperature, blood pressure,]* a breast examination where indicated, heart and lungs examination, abdominal palpation, pelvic examination including inspection of the cervix and bi-manual examination including estimation of gestational size, and rectal examination if appropriate; inspection and examination of extremities for variscotities and signs of phlebitis and further examination as indicated by history or laboratory findings. All women with significant medical, gynecological, psychological or hematological abnormalities must be *[referred]* ***considered for referral*** for medical evaluation.

If the patient is more than 14 weeks LMP, or there is any difficulty in ascertaining uterine size or any question of pelvic pathology, ultrasonography shall be performed.

The physician shall perform the procedure *[only]* in an LACF *[where]* ***only when the absence of*** contraindications to performance of the procedure in a non-hospital setting *[have]* ***has*** been established *[including at least the following circumstances:]* ***and documented in the patient's record. The contraindications shall include but not be limited to the following circumstances;*** (a) no available veins; (b) *[gestational size]* ***stage of pregnancy*** undetermined; (c) *[gestational size]* ***stage of pregnancy*** exceeding physician's *[capability or training]* ***[current certification from the Board*;*** (d) inadequate instrumentation for all eventualities; (e) patient unable to cooperate; (f) extreme obesity precluding the use of conventional instruments; (g) severe vaginitis; (h) acute infections; (i) large myomas; (j) significant medical conditions including blood dyscrasias, cardio-vascular or respiratory disorders, etc.; (k) hematocrit 30% or less. Referrals for a hospital procedure shall be made promptly for any patient found ineligible for an LACF procedure because of medical contraindications.

6. The physician shall perform the procedure only in an LACF fully staffed and with instrumentation and supplies and emergency equipment appropriate to the advanced procedures, all in accordance with Department of Health requirements and accepted standards of practice. A policy shall have been established regarding use of laminaria or osmotic cervical dilators, including maintenance of contact and follow-up with patients permitted to leave the LACF overnight while awaiting completion of the procedure. The policy shall include written instructions to the patient in addition to oral counseling, to assure that the patient understands the risks and the necessity of returning and of contacting the LACF in the event of any complication.

The physician may delegate the administration of anesthesia to be given by a Certified Registered Nurse Anesthetist whose registration and certification is current, provided that the operating surgeon or another physician on the premises is available to assist in the event of anesthetic complications, and that physician is knowledgeable in the use of the anesthetic and in resuscitative measures including CPR.

The physician shall assure that drugs on the premises, including those use for anesthesia procedures, are controlled by inventory and specific management policy in accordance with pertinent rules of the federal Drug Enforcement Administration, the State Department of Health, and any applicable rules of the Medical Board.

The physician shall assure that a patient is required to remain in the recovery room for a minimum of one hour and until in satisfactory condition for discharge, ***which shall be determined and noted in the chart by a professional registered nurse or a physician*,** and that a physician remains on the LACF premises until the last patient has been discharged from the recovery room. The patient shall be given written instructions on possible complications and directed to contact an LACF physician who shall be available and readily accessible on a 24 hour/day basis.

The physician shall perform the procedure in an LACF having a specific policy for examination of tissues removed, and a report shall be kept in the patient's file.

The physician shall perform the procedure in an LACF, having a specific policy for treatment and follow-up where there is an adverse medical occurrence such as: (a) incomplete termination procedure requiring hospitalization; (b) failed procedure resulting in second procedure off premises or a continuing pregnancy; (c) perforation or suspected perforation; (d) hemorrhage (defined as approximately 500 cc or above at one event); (e) infection (defined as fever of 100.4 degrees F. or greater on 3 or more days).

*[7. The physician shall perform the procedure in an LACF where monthly records are maintained to provide the following data (for the purpose of these records, individual patients

comprising the lists shall be identified only by date and by initials and/or case number): (a)number of patients who received termination procedures; (b) number of patients who received laminaria or osmotic cervical dilators who failed to return for completion of the procedure; (c) number of patients who reported for postoperative visits; (d) number of patients who needed repeat procedures; (e) number of patients who received transfusions; (f) number of patients suspected of perforation; (g) number of patients who developed pelvic inflammatory disease within 2 weeks; (h) number of patients who were admitted to a hospital within 2 weeks of the procedure; (i) number of patients who died within 30 days. Subsections (b) through (i) shall be summarized by number and percentage of monthly total for post-18 week procedures.]*

ENERGY

(a)

THE COMMISSIONER

DIVISION OF PLANNING AND CONSERVATION

Energy Conservation Program Development and Public Utility Planning Evaluations

Adopted New Rules: N.J.A.C. 14A:20

Proposed: December 3, 1984 at 16 N.J.R. 3293(a).
Adopted: November 8, 1985 by Leonard S. Coleman, Jr., Commissioner, Department of Energy.
Filed: November 12, 1985 as R.1985 d.619, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 52:27F-11(g) and (q) and 27F-18.

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): February 3, 1991.

Summary of Public Participation:

The Proposed Energy Conservation Planning and Program Development Regulations were published for public comment at 16 N.J.R. 3293(a) on December 3, 1984. These regulations are known within the Department of Energy as PRN 1984-700.

Public notice of the regulations was provided in several ways in addition to publication in the Register. The Department mailed copies of the regulations to the most directly affected public agencies and regulated industries as well as county energy agencies and various nonprofit citizens and trade organizations. Copies were sent to the Department's Advisory Council on Energy Planning and Conservation. Finally the Department published notice of a public hearing on the proposed regulations in newspapers of general circulation in the state.

The Department held a public hearing on the regulations in the State Library Archives Room on January 24, 1985 in Trenton. At that time the presiding Hearing Officer stated that the hearing record would remain open until February 5, 1985. A certified court reporter was present at the hearing and a complete transcript was produced. Subsequently the Draft Energy Master Plan was released for distribution on March 7, 1985. The regulations were included as an appendix of the plan and prominently mentioned in the conservation section of the Plan. The public was thus afforded the opportunity to examine the regulations in the context of a general energy policy for the state. Public hearings on the Master Plan in which testimony was received on both the regulations and the plan were held as follows:

May 20, 1985
Board of Public Utilities
Newark

May 21, 1985
Ocean County Library
Toms River

May 22, 1985
Camden City Hall Chambers
Camden

Comments received from all these sources are part of the hearing record. Formal written testimony focusing exclusively on the regulations was received from:

National Wildlife Federation
New Jersey Office of Legislative Services
New Jersey Department of Commerce and Economic Development
Atlantic Electric Company
Hunterdon County Department of Solid Waste and Recycling
Elizabethtown Gas Company
New Jersey Business and Industry Association
South Jersey Gas Company
New Jersey Industrial Energy Users
Ocean County Energy Council
Rockland Electric Company
Department of the Public Advocate
Public Service Electric and Gas Company
Jersey Central Power and Light Company
Department of Environmental Protection
New Jersey Utilities Association
Board of Public Utilities
Freeholders of Morris County
Rutgers University Cooperative Extension Service
Monmouth County Board of Social Services
League of Women Voters
Burlington County Department of Economic Development
Borough of Park Ridge
New Jersey Federation of Senior Citizens

The Department has carefully reviewed the comments received and prepared a detailed document which contains a listing of concerns raised and the Department's response to those concerns.

A copy of the response document is being sent to all individuals who commented on these regulations. Others may request a copy of the report from:

Edward J. Linky
Chief Regulatory Officer
New Jersey Department of Energy
101 Commerce Street
Newark, New Jersey 07102

These regulations are being adopted with a few substantive changes. However these changes are not so substantial as to require publication of the rules as mandated by the regulations of the Office of Administrative Law.

Summary of Changes to Adopted Regulations

The major sections of the regulations requiring changes are summarized by section and subject area below.

General Concerns

While each utility must plan to meet enumerated targets, the department will review the cost-effectiveness of means to achieve those targets or such other targets as may be approved. Each utility is encouraged to devise alternative and creative methods of reaching common goals. Only targets and methods which are found to be cost effective will be approved and ordered by the department.

Compliance will be promoted through direct enforcement of the department's orders under N.J.S.A. 52:27F-11g, and 27F-21, to be complemented through the actions of the Board of Public Utilities pursuant to the Energy Master Plan, N.J.S.A. 52:27F-15(b).

Definitions

A definition of alternative technologies has been added with a view toward including these technologies in the modified definition of cost effective conservation measures. Many alternative technologies are also conservation measures with a short pay back period.

The definition of low income has been changed to reflect the concern of county social service agencies.

N.J.A.C. 14A:20-1.4 has been changed to reflect a more flexible posture. The five percent mandatory annual HESP audit completion is now a goal rather than a fixed target.

N.J.A.C. 14A:20-1.7 through 1.9 provide changes that include the use of clarifying language or procedures to implement the approval process for the programs. These changes are not substantial.

Summary of Public Comments and Agency Responses:

COMMENT: 1. The statement, ". . . These regulations will help ensure consistency with the Energy Master Plan and help lower electricity and natural gas bills," is not reassuring in light of the information available to the public and the Master Plan has not been adopted. (**Department of Commerce and Economic Development-DCED**) Regulations fail to provide adequate information regarding which revision of the Master Plan to follow. It's assumed that the delay in adopting the Master Plan is because of great uncertainty relevant to basic premises of energy utilization on which it is based. (**Atlantic Electric-AE**).

RESPONSE: 1. The New Jersey Energy Master Plan was distributed for public hearings and comments in March, 1985. It was adopted in November, 1985. The public has had ample opportunity to examine both the Master Plan and the regulations for policy inconsistencies. A close examination of both documents has been performed by DOE staff and no inconsistencies have been found. Energy Conservation in both the Regulations and the Master Plan is identified as a long term energy source for the state. The regulations are purposefully keyed to implementing the Master Plan sections on conservation.

COMMENT: 2. It's about time utilities are required to look at less capital intensive ways of maximizing energy distribution. (**Hunterdon County-HC**).

RESPONSE: 2. The Department is in full agreement.

Economic Impact

COMMENT: 1. The conservation program should not be described as "measurable" because this language provides a false implication that measurement is exact. Measurements are difficult to determine and to quantify. (**AE**).

RESPONSE: 1. The measurement of energy savings though not as exact as measuring inches or pounds is sufficiently accurate to determine the costs and benefit thereof.

COMMENT: 2. Each incremental unit of generating capacity added to the electric distribution system is so much more expensive than the average imbedded generating cost. Thus, it pays customers to subsidize avoidance of the incurrence of such cost. But this is not so with the gas industry today. Each incremental unit of additional gas may actually cost less than the average cost currently on line. (**Elizabethtown Gas Co.-EG**).

RESPONSE: 2. The recently filed RMA by South Jersey Gas indicates that its supplier is forecasting higher rates rather than lower. Additionally, the incremental cost of more gas even if lower is not as inexpensive as many conservation options.

COMMENT: 3. The regulations are counter to the avowed efforts of the State to attract new business and new construction within the State. (**EG**) It creates a fear that immediately upon completion of new units, owners will be required to subsidize conservation of the older housing stock with higher utility bills. (**N.J. Business & Industry Association-NJBIA**).

RESPONSE: 3. The lucky individuals who have new energy efficient housing or business properties see a very small rate impact since their energy bills will already be substantially smaller to begin with.

COMMENT: 4. There is no data available to substantiate the claim that these regulations would definitely lower energy consumption. There was no discussion included on the expenses involved or of the burden on utility ratepayers of subsidizing these programs. (**South Jersey Gas-SJG**).

RESPONSE: 4. The utility has the responsibility to develop a program which does save energy and which is not a burden on utility ratepayers.

COMMENT: 5. If there is a model and basis for saying that these regulations will have a positive impact, DOE should supply it to all utilities to better track or forecase conservation cost benefits. (**SJG**).

RESPONSE: 5. Numerous studies have been done that demonstrate the positive impact of conservation and it is the job of each utility to implement the best conservation programs available.

COMMENT: 6. Short term increased employment. A contractor would conceivably staff-up to deplete a geographic area and then move on to more profitable areas leaving local employees to fend for themselves. Temporary jobs have resulted from plans currently in effect, but the lack of consumer response to an aggressive advertisement campaign places all those newly created positions in jeopardy in a short period of time. (**SJG**)

RESPONSE: 6. The goal of five percent per year provides for at least 20 years of conservation employment and undoubtedly some slippage will occur. The skills used in conservation can be applied to the construction trade in general. In a small state such as New Jersey a local workforce can cover one-third of the State.

COMMENT: 7. Systemwide savings via reduced need for capital construction and purchase power. DOE says only that when implemented "the public utilities **may be** expected to lower the demand for new capital facilities and power

purchases . . ." The systemwide benefits (if they exist) are speculative and will not be realized for many years (beyond 2000). On a present value basis, it is likely that the cost to non-participants will vastly exceed the benefits. **(N.J. Industrial Energy Users-NJIEU; DCED).**

RESPONSE: 7. The utilities are required to factor significant conservation into their plans for capacity and purchases of capacity or energy. The non-participants are not considered when new plant or transmission capacity is proposed.

COMMENT: 8. **Query:** Can the hard pressed economy of the industrial northeast, including New Jersey, absorb the increase in rates which will result from the proposed regulations? **(NJBIA; DCED).**

RESPONSE: 8. The disposable income of New Jersey's residents will increase through conservation much more than the projected increase in rates. Money spent on conservation stays in State rather than being shipped out to coal, oil and natural gas producing states.

COMMENT: 9. Will the State reduce staffing of its social agencies and involvement in energy conservation through such agencies, that is, reduce cost to taxpayers? **(Ocean County Energy Council-OCEC)**

RESPONSE: 9. If the legislature perceives a need to reduce staffing at social agencies then the agencies will be cut back.

COMMENT: 10. Will DOE assume the responsibility of not only the utilities' programs, but those State programs that stay in effect? **(OCEC)**

RESPONSE: 10. The Department will evaluate and approve the utility programs not run them.

COMMENT: 11. **Too costly.** Should contain cost. **(NJIEU; SJG; NJBIA; Rockland Electric Co.-REC; BASF; Public Advocate-PA).**

(a) **NJ Natural Gas Co.** (NJNG)—Annual revenues $283 million. Present program is about $980 thousand (.25%). Potential increase expenditure for company of $21.4 million, not including marketing efforts, additional monetary incentives or manpower requirements.

(b) **PSE&G**—Present program is $16 million (4/10% of revenues). Significant increase of approximately $65 million per year. Present operating revenues are about $4 billion. (Conservation measure is about 1 1/2% of revenues.)

(c) **Elizabethtown Gas Co.**—Two year expenditures could be as high as $15 (3% of operating revenues) which is many times the anticipated expenditure. (Presently spend $2 million and present operating revenues are about $275 million a year which is about 1% of operating revenues for conservation.)

(d) **South Jersey Gas Company**—Present program is about $850,000 annually. Annual revenues $250 million (about .002% of the annual revenues.) Proposed programs would cost about $3 (1.2% of annual revenues.) The analysis used by DOE official during the hearing is misleading, and disguises the true cost to the public of the DOE proposal (percentage of annual revenues used for conservation.)

1) To gauge the impact of the proposed program on the public, the impact of the new expenditure on rates must be determined. The $3 million amount reflects only the proposed programs that are currently quantifiable. The actual expenses will be higher.

2) The $3 million would cost each residential customer about $.1511 per mcf. Based on the consumption of a typical heating customer of 107 mcf per year, the annual cost to the typical customer would be $16.17. The current plan cost about $4.96 per year. The new program would increase the annual rate to about $11.21 per customer. It is this number (rather than the percentage of utility revenues devoted to conservation) which must be weighed against the actual benefit which ratepayers will receive.

3) If customers were made aware of the potential $11.21 minimum increase, they would oppose the adoption of the regulations.

(e) **Atlantic Electric Company** (AE)—Annual revenues $500 million. Present program is about $3.5 million. Proposed program would cost about $10.5 million (about 2% of the annual revenues.)

(f) **Jersey Central Power & Light Company** (JCP&L)—Present program $11 million (about $18 million including the "fault agreement".) Proposed program would cost in excess of $40 million.

RESPONSE: 11. Concern that the regulations as applied will lead to excessive costs reflects a fundamental misunderstanding of how the Department will implement the program. A fair reading of the regulations as proposed and now as adopted will show that only those energy conservation plans which the Department finds to be cost effective on a utility specific basis will be approved and directed to be put into place. All costs estimates offered by utilities—such as those cited above—which precede the submission and approval of a utility's energy conservation program are too speculative to merit detailed rebuttal. Moreover, whatever the ultimate program and its corresponding costs, such approved costs will be more than matched by the economic benefits of the utility's investments in energy conservation and related alternative technologies. Otherwise, the program will not be approved. This is the clear intent of the requirement that the company's conservation plans must be "cost-effective." It is instructive to note that this is the same general procedure that has been employed by utilities and regulators alike to determine if investments in energy production are cost-effective. The Department also notes that the cost projections quoted by the utilities in their testimony lack both substantiation, detail, and any balancing projection of benefits. Thus, they are both untested for accuracy and unbalanced as to the net impact on the company and the public.

With particular reference to the electric power companies, a cost-effective energy conservation program will be one that reduces overall system costs for the purchase or generation of power, the financing of new power plants, the consumption of oil or natural gas, and other typically incurred costs of power production and distribution.

As to natural gas utilities, a cost-effective energy conservation program will lower the systemwide costs of purchasing natural gas, storing gas for peaking periods, constructing and maintaining peakload facilities, adding new pipeline capacity and other costs routinely incurred for gas distribution.

Once a program has been certified by the Department as cost-effective, the utility can expect with great confidence that all reasonable costs related to the program will be approved as such by the Board of Public Utilities in the course of any subsequent rate case. This has been the general practice to date with respect to all energy conservation programs dictated by the BPU. This is also the general practice regarding the rate treatment accorded the orders and regulations of other departments and agencies which impact upon utilities in other areas. There is no reason to expect that the BPU will treat these regulations as implemented in any different fashion.

Environmental Impact

COMMENT: 1. Since gas is the environmentally superior fuel, any **impediment** to its utilization in a market cleaning environment will have adverse consequences. **(EG)**

RESPONSE: 1. Conservation of natural gas is a cleaner mechanism than burning gas, and will thereby aid environmental integrity. In addition, the more natural gas that is freed up by conservation, the more gas that will be available for cogeneration and fuel use conversions statewide. There is no reason to assume that only environmentally undesirable fuels will be used if natural gas is not used. As the League of Women Voters commented, incentives should be given to consumers and utilities to increase the use of solar energy, wind, cogeneration and the environmentally sound use of coal.

COMMENT: 2. Energy conservation measures should be designed so as not to have an adverse effect on historic sources. Recommend that DOE use as a guide the Secretary of Interiors' Standards for Rehabilitation. Certain investments may be visually or physically damaging to historic fabric, for example,

(a) replacement windows that do not match originals

(b) exterior storm windows and doors that differ in materials or detail to originals

(c) aluminum or vinyl siding, which can obscure historic appearances and damage fabric

(d) installation of insulation, which can cause removal of original wall surfaces and trim

(e) hung ceilings, which can cover cornice moldings

Programmatic memorandum of agreement should be developed that will enable the conservation program to proceed expeditiously while considering historic resources. **(Dept. of Environmental Protection-DEP).**

RESPONSE: 2. The regulations do not intend to disregard the concern for historic sites in New Jersey. It must be emphasized that the regulations do not **require** anyone to participate in conservation; only the utilities must participate by formulating energy conservation plans. Any owner of a structure with historic fabric need not mandatorily implement conservation measures. In addition, the loan programs to be included in the utility plans apply to conservation equipment suitable for historic structures.

The special problems presented by historic sites should be addressed in utility conservation plans, though the percentage of housing fitting that description is comparatively small.

The D.O.E. has no objection to the Department of Environmental Protection's suggestion that a programmatic Memorandum of Agreement be developed that will enable the conservation program to proceed expeditiously while considering historic resources.

COMMENT: 3. There are not data available to date that can substantiate the claim that the regulations would protect the environment. No specific measurable criteris. **(SJG).**

RESPONSE: 3. To the extent that less fuel will be used through conservation efforts, the regulations will indeed protect the environment. Conservation itself is an energy source that requires no combustion and leaves no residue. It logically follows that the environment will be enhanced.

LEGAL BASIS

COMMENT: DOE does not have the statutory authority to adopt the proposed regulations. **(All utilities and N.J. Utilities Association-NJUA).**

A. **N.J.S.A. 52:27F-11(g)**

This section authorized DOE to develop a conservation program **limited** to an **evaluation** of energy systems as they relate to certain thereafter enumerated items. The subsection further limits DOE's authority to evaluate energy systems to specified types of items, that is, inspections of oil heating systems, use of day-night thermostats, standards for boiler operation, etc. It gives DOE **an advisory role.** It does not mention any energy audits, incentives for purchasing, installation or use of conservation measures, minimum percentage completion rates, direct utility investments, loans, rebated or bounties. **(NJUA).**

B. **N.J.S.A. 52:27F-11(n)**

This subsection is directed at the conservation plans of a State agency for itself, and does not provide the power to DOE to require the BPU to prepare a plan for rate treatment for the State's utilities. **(NJUA)**

BPU can't comply with the proposed regulations. BPU can't state in advance of the time their consideration in a base rate case how these expenses will be treated nor that it will or will not allow certain expenses because any and all expenses are subject at all times to challenges by intervenors or by BPU staff in rate proceedings. **(NJUA).**

C. **Opinion of the Attorney General, May 11, 1984**

This Opinion dealt with an issue other than the current issue of DOE's authority to adopt the proposed regulations. BPU has itself the authority to design, implement and enforce appropriate conservation plan for utilities. The Opinion recognizes the limitations on DOE's powers over State agencies. **(NJUA)**

"The Legislature certainly intended that 'to the maximum extent practicable and feasible' other State agencies, including the BPU, would conform their regulatory function to the DOE's guidelines, but the Legislature did not give the DOE the explicit authority to compel a particular result." **(NJUA)**

The opinion does not address the full meaning of subsection (g) and there is no meaningful analysis that would permit a more expansive reading of the subsection. **(NJUA)**

D. Specifics

1) **20-1.4**—no authority to direct electric and gas utilities to make expenditures for conservation measures or appliance rebates or to meet specific performance goals. DOE has authority to require the HESP and the CACS audits, but lacks the power to set completion rates for same (limited authority to evaluate energy systems per 52:27F-11(g)). **(NJUA)**

2) **20:1.4(a)(5) and (6)**—no authority except by means of the Energy Master Plan (27F-14 & 15). **(NJUA)**

3) **20-1.5 & 20-1.6**—no authority. They are dependent on Section 20-1.4. **(NJUA).**

4) **20-1.7**—inappropriate subsidy to oil heat customers. (See points raised under 14A:20-1.7.) **(NJUA)**

5) **20-1.8**—DOE has authority under 27F-11 to request information from utilities, but the authority does not extend to demanding the impossible (difficult and expensive to provide required information) **(NJUA)**

RESPONSE: A. This comment has been rejected. The department's powers to adopt an energy conservation program are not limited to only an evaluation of energy systems since **N.J.S.A.** 52:27F-11(g) also provides that the energy conservation program "may include, but shall not be limited to, the requiring of an annual inspection and adjustment . . . of oil-fired heating systems . . . the setting of lighting efficiency standards . . . the establishment of mandatory thermostat settings and the use of seven-day, day night thermostats . . . the development of standards for efficient boiler operation . . ." etc.

Moreover, the commentators' interpretation would limit the energy conservation program to information gathering without any conservation activities and limit the department's role to advisory which is in conflict with clear authority given to the department to "design, implement, and enforce" the energy conservation program.

B. This comment has been rejected. **N.J.S.A.** 52:27F-11(n) requires State agencies, including the Board of Public Utilities, to submit an energy utilization report and conservation plan to the department for its review and approval. When this section is viewed together with the department's statewide energy conservation goals and the interest to coordinate the State's energy policy (F-2), this section applies to the manner in which State agencies **apply** their rules and authority.

In an attempt to clarify these regulations and avoid confusion with **N.J.S.A.** 52:27F-14 (Master Plan), the section which requires BPU to submit a rate treatment plan (14A:20-1.9), has been amended.

C. Part of this comment has been accepted. The opinion does not address the full meaning of 11(g). The issue addressed in the opinion, in a broad sense, was whether the BPU's action in approving certain energy conservation provisions in a tariff agreement conflicted with the department's authority to promulgate regulations in the area of conservation.

The opinion indicated that the decision to implement conservation provisions was a determination which fell "naturally within the primary jurisdiction of the department to 'design, implement and enforce a program for the conservation of energy . . . in residential facilities' (N.J.S.A. 52:27F-11(g), and within its exclusive jurisdiction to establish energy related construction standards . . ." It added that the action by the BPU was a valid exercise of its authority because the tariff had not conflicted with any department articulated rule, regulations or policy and because the department had not objected at the hearing. However, when any agency proceeds contrary to the department's recommendations, it must provide justification by "some substantial countervailing purpose to be achieved within the area of its special expertise in order to warrant departure for the intended objectives of the Act."

D. 1) This comment has been rejected in part since the department has the authority to require the HESP and CACs audits. When the legislature adopted the Department of Energy Act in 1977, Chapter 146 of the Laws of 1977, **N.J.S.A.** 52:27F-1, **et seq.**, it declared "it to be in the best interest of the citizens of this State to establish a principal department in the Executive Branch . . . to coordinate authority, regulation and planning by the State in energy related matters". The legislature equipped the department with a variety of powers, inter alia, the power to "design, implement, and enforce a program for the conservation of energy in commercial, industrial, and residential facilities . . ." and to ". . . adopt, amend or repeal, pursuant to the [APA] such rules and regulations necessary and proper to carry out the purposes of this act; [and] "Determine the effect of energy and fuel shortages upon consumers, and formulate proposals designed to encourage the lowest possible cost of energy, . . . consistent with the conservation and efficient use of energy". **N.J.S.A.** 52:27F-11(g) and (w).

The department's responsibility over energy planning by electric and natural gas utilities is set forth, among other places, in the requirement that the department ". . . adopt rules and regulations requiring the periodic reporting by energy industries of energy information which shall include but not be limited to the following:

(1) Electrical generating capacity in the State; long-range plans for additions to aid capacity; efficiency of electrical generation; price and cost factors . . .; projections of future demand, consumption of electricity by sectors; times, duration, and levels of peak demand; . . . and

(4) Such other information as the Commissioner may determine necessary for carrying out the purposes of this act" **N.J.S.A.** 52:27F-18(a).

The Energy Act gives the department of superabundance of powers designed to promote and direct State policies governing, among others, public utilities in order to achieve the numerous energy planning and conservation goals set by the Legislature. See **N.J.S.A.** 52:27F-2, generally.

D-2. This comment has been rejected. The Master Plan addresses energy conservation through other state agencies while 11(g) provides authority for energy conservation programs and related planning by everyone else, including public utilities.

D-3. This comment has been rejected. See 1(A) and 1(D)(2) above.

D-4. This comment has been rejected. See response under 1.7. infra.

D-5. This comment has been rejected in part. The department does have authority pursuant to 27F-11 to request information from utilities. Most of the information requested by these regulations can be readily obtained since the utilities already possess it. It is basically a matter of compiling this vital information which is needed to assist in performing the costs benefits analysis which will ensure cost effective programs.

COMMENT: 2. There will be three State agencies involved in the formulation and approval of the utilities' conservation programs: DOE, BPU and Rate Counsel. **(Board of Chosen Freeholders County of Morris-FCM; PSE&G).**

(a) What agency has jurisdiction over conservation matters? BPU has mandated new conservation programs and the proposed regulations are further addition to the BPU rules. Two State agencies may provide conflicting direction to the utilities relative to conservation programs. One State agency should oversee these programs and set up a set of consistent regulations. **(SJG; PA; AE; NJNG; REC; JCP&L; FCM)**

(b) Recommend a semi-formal interagency working group be established to, if possible, work out a common position on conservation program concepts, funding levels, and administrative strategies. **(FCM).**

(c) Recommend that DOE and BPU establish a task force to evaluate the measures currently in effect and through mutual inputs amend current conservations plans as deemed appropriate. **(JCP&L; SJG;)**

RESPONSE: 2. This comment has been rejected. Each utility will formulate its own conservation program pursuant to these regulations. There will be only one agency, the department, approving these conservation programs. See 1(c) above.

(a) These energy conservation regulations have one agency overseeing them, the department, which is the agency with the authority to "design, implement, and enforce" the outlined energy conservation program.

(b) These regulations address conservation and related planning for private entities. The Department believes that there is no need to organize any semi-formal inter agency working group. This may be a more appropriate suggestion in addressing the master plan.

(c) The BPU and the Department are already members of a task force which is in the process of evaluating present conservation measures. Thus, it would be a duplication of effort to establish another task force. The department believes that the steps taken by the BPU in promoting energy conservation need to be expanded rather than being amended. There regulations propose to do so.

COMMENT: 3. Matters directly involving a utility should unless strong and compelling reasons exist to the contrary, be handled by the broad powers of the BPU. **(EG).**

DOE should be **restricted** to those areas where the BPU has not already exercised in good faith similar efforts to achieve comparable goals. **(EG).**

RESPONSE: 3. This comment has been rejected. The department was created because no state agency possessed "either sufficient information or adequate authority to provide for and insure the use and efficient production, distribution, use and conservation of energy (F-2) the department was established to "coordinate authority, regulation and planning by the state in energy related maters". **Id.** see 1(A)(c) above.

14A:20-1.1 PURPOSE AND SCOPE

COMMENT: 1. Standardization of programs for all utilities. Arbitrarily assigns identical goals for all utilities in the State. Rigid, inflexible and presumptive programs. **(PSE&G; JCP&L; SJG).**

(a) Each utility must have the ability to develop conservation programs especially designed to maximize successful participation within its franchise area. **(NJNGC).**

(b) Must give consideration to differences from utility to utility: Customer base in terms of income, housing type, residential/business mix, demographics, consumer acceptance of plan, etc. **(REC; NJNGC; SJG).**

RESPONSE: 1. The Department disagrees. The regulations provide for standardization only in that the utilities must develop programs in certain generic areas for example, loans, direct investments and appliance bounty programs. The utilities are free and indeed encouraged to develop the specific programs tailored to their franchise areas.

(a) This statement is a rephrasing of (1), However NJAC 14A:20-1.5(a) requires that each utility develop its own specific marketing strategy for the required programs.

(b) This statement is a rephrasing of the concerns raised above.

COMMENT: 2. Unfair to ratepayers.

(a) Gas and electric users will be charged twice. **(NJNGC).**

(b) Ratepayers will assume a responsibility provided by government funding (another tax)—A social service program for the poor. Should be handled by social welfare agencies and funded from general tax revenues. **(NJIEU; BASF-Wyandotte Corp.).**

(c) Creates a new potential for abuses of another well-intentioned social program. **(BASF).**

(d) Many ratepayers have already, in unsubsidized programs, improved the efficiency of their situation and may no longer be able to participate. **(NJBIA; EG).**

(e) Commercial and industrial users will pay a large share of the overall costs of these programs, although they receive no benefits. (via surcharges on their electric and gas bills.) **(NJBIA; NJIEU;)**

RESPONSE: (2) This statement is not correct. The heating customers of natural gas utilities will be charged once, similarly the heating customers of the electric utilities will only be charged once.

(b) It is conceptual license to equate these programs with a broad based surrogate tax for the poor which will be funded by the ratepayers. To be sure the poor are a targeted beneficiaries of some of these programs but all sectors of the economy and all customer classes will benefit from these programs. Over the long term the programs will alter the energy consumption patterns of consumers and transform the utilities from purveyors of energy to purveyors of energy services upon which they will earn a duly authorized rate of return.

(c) This comment assumes incorrectly that these programs are primarily intended as a social welfare program. For the reasons stated above it is incorrect.

(d) As a general matter the Department disagrees with this statement. If special cases arise in any utility franchise area it is the responsibility of the affected utility to document these cases to the Department in their program submission.

(e) This presupposes the allocations of program costs on customer classes by the Board of Public Utilities. It further assumes no documentable long term benefits from the regulations. The stated intention of these regulations is to mandate that energy conservation be treated for planning purposes as a stable and continuing source of energy for the state.

COMMENT: 3. Regulations do not stress the important role of energy conservation in **commercial office facilities,** especially new ones. **(NJNG).**

RESPONSE: 3. Commercial office programs do have a role to play in energy conservation but the residential sector still offers the greatest source for energy conservation.

COMMENT: 4. Regulations are **duplicative** of existing conservation activity (cogeneration and load management programs) already approved by the BPU and thus cost effective. **(AE; PSE&G; REC; NJNG; PA)**

RESPONSE: 4. These programs are not duplicative since they are not to be measured by the strict benefit cost standards usually employed by the Board of Public Utilities. Moreover to ensure policy and regulatory consistency the appropriate agency to administer these regulations is the same agency which is responsible for the Energy Master Plan.

COMMENT: 5. Must inform ratepayers of the program costs on their monthly bills. Must inform ratepayers about N.J.'s plan to subsidize conservation, and how much additional taxes will be required to pay for it. Households should be given a simple graph to track energy use so they can see a positive savings in their energy and their dollars. **(OCEC; EG)**

5. This statement assumes massive costs needed to implement these programs without offsetting documentable savings in energy. The Department does agree that public awareness in the form of an easy to document residential energy savings formula is worth investigation. However experience in certain existing conservation programs leads the Department to remain cautious about this approach.

COMMENT: 6. No recognition of the total scope and needs for conservation activities. Other conservation measures are cost-effective, **but not required by** the regulations, for example, improved thermal efficiency standards for homes, maximum appliance efficiency standards (for example, appliances put in new homes), bans on inefficient air conditioning equipment, high efficiency heating and water heating equipment be installed in all new construction, and high-efficiency requirements for all replacement equipment, regardless of fuel source. **(AE; NJNG; Sen. Dalton)**

DOE should work on conservation efforts in the private, non-regulated sector, for example, housing efforts might focus on builders, remodelers and home contractors, lending institutions, and appliance vendors rather than utilities. Also, should undertake initiatives with respect to municipal and county utility authorities as well as state facilities, which are outside BPU regulations. **(PA)**

RESPONSE: 6. The Energy Master Plan in Chapter I Part Two Conservation addresses these concerns.

COMMENT: 7. It is a violation of basic cost-of-service ratemaking philosophy and would result in a further increase in New Jersey's already high energy rates. (**NJIEU**)

RESPONSE: 7. The Department will not evaluate these programs within the framework of a strict cost benefit cost of service ratemaking. First, because that approach is, if applicable at all to these programs, the regulatory province of the Board of Public Utilities. Second, all customer classes are the intended beneficiaries of these programs. Absent a compelling argument to the contrary the Department will be using a benefit to society at large test to evaluate these programs.

COMMENT: 8. Discrimination against utilities. Regulations do not apply to other energy purveyors. (**NJUA**)

RESPONSE: 8. The public utilities are not unfairly the subject of these regulations. Other purveyors of energy specifically the oil industry are impacted by energy conservation through reduced sales of fuels in the residential, commercial and industrial sectors. Moreover as these regulations are applicable to the oil heated homes of electric utility customers an impact will be distributed to both oil industry and the electric utility.

COMMENT: 9. DOE can be more specific and detailed in how these programs will work. (**Sen. Stockman**)

RESPONSE: 9. The Department agrees and prior to program submissions will hold preapplication conferences with individual utilities as well as publish guidelines on the preparation of program submissions.

14A:20-1.2 DEFNITIONS

COMMENT: 1. **"Cost effective"**

(a) Definition is nebulous and may result in a conservation measure with a pay back of 30 years being cost effective. Should only be found cost effective if it has a pay back period of 7 years or less (see 10 CFR §458.307). (**PSE&G; REC; FCM**)

(b) Definition is unsuitable for assessing the potential benefits of the programs because it is solely **concerned** with the perspective **of an individual** customer. Each conservation measures' cost effectiveness should be determined according to the **non-participant** test. Another test suggested is the **"measured savings"** supported by **actual performance data.** (**REC; JCP&L**)

(c) **Definition is arbitrary.** It sets a figure which may not reflect a true cost effective program. **No documented basis** for determining that it is a cost effective method capable of achieving the goals of the DOE or the needs of the customers. (**AE**)

RESPONSE: 1. The definition of "cost effective" has been clarified to those conservation measures which provides a simple payback of 10 years or less. The determination cannot be based on the non-participant test any more than new capacity can be evaluated on that basis.

COMMENT: 2. "Costs and Benefits—There is no mention of methods and models to be used in measuring these costs and benefits. (**AE**)

RESPONSE: 2. The methods and models should be chosen by the utilities subject to the Department's approval.

COMMENT: 3. Replacement equipment should have an efficiency that is at least as good as the equipment it replaces (annual fuel utilization efficiency of at least 80 percent—gas fired furnaces or boilers.) (**Cook College-CC**)

RESPONSE: 3. The utilities and the Department already recognize that the efficiency of 80 percent for furnaces and boilers is a minimum without specifying that value in the regulations.

COMMENT: 4. **Low income**—Definition will eliminate many recipients from existing utility conservation programs. Consideration should be given to those receiving heating subsidies, such as HEAP recipients. (**PSE&G; CC**)

(a) Definition causes a disparity between someone over 65 or disabled and someone under 65 years old. (**Monmouth County Board of Social Services-MCBSS**)

125% of poverty level
—$6,225/family of one
— 8,400/family of two
—10,575/family of three

Lifeline income eligibility
—$9,000 for a family of one
—12,000 for a family of two

Definition should be broadened to meet Title XX guidelines
—$10,250/family of one
— 13,404/family of two
— 16,558/family of three

(b) Definition should include households with annual incomes less than or equal to 150% of the federally defined poverty level guidelines. (**JCP&L**)

RESPONSE: 4. Low income limitation has been raised to 150% of poverty level to include more households. The adjustment of the income level in the definition to "150% of federal poverty level" will eliminate the concerns expressed by several commentors. This figure ensures that recipients presently eligible to participate in utility programs will continue to be eligible while others who may well need assistance could be eligible.

HEAP recipients would be included in the "low income" definition and therefore, would be eligible for conservation programs. In addition, **N.J.A.C.** 14A:20-1.5(a)(3) (proposed regulations) includes "low income persons" among those to be targeted as priority groups. Consequently, HEAP recipients may be targeted for the programs.

The gap created by the former income level between persons over 65 or disabled and persons under 65 is lessened by the revision to 150% of the federal poverty level.

DOE agrees that the income level should be 150% of the federal poverty level and has revised the regulations accordingly.

COMMENT: 5. **Energy conservation plan**—Definition is **too broad** and needs to be more specific. (**AE**)

RESPONSE: 5. The definition has been clarified and made more specific.

COMMENT: 6. **Energy efficient appliance**—It is only a partial listing of available appliances with no actual definition of what energy efficient means. (**AE**)

RESPONSE: 6. The list is indicative of what is required but not all inclusive, utilities are allowed to specify additional appliances as they see necessary.

14A:20-1.3 TIMING OF SUBMISSIONS

COMMENT: 1. Two year period is too long and inflexible. Should be flexible and responsive to changes before the end of two years with an absolute minimum reliance on formal proceedings. Should be an annual plan. (**JCP&L; AE; SJG**)

RESPONSE: 1. The Department has carefully considered this request but feels that program review should only be done every two years. Even with an expedited review by the Department there is still considerable start up time for programs and it is unrealistic to review programs before they have had a full two years in operation. The Department is of course prepared to consider modifications to existing programs where both the

Department and the affected public utility agree that a more effective program will result.

COMMENT: 2. 90 day requirement is unreasonably short. Need more than 90 days to do research and feedback. Do not foresee the implementation of any plan within six months of the approval of the regulations (based on psat review processes by DOE, BPU and Public Advocate.) **(PSE&G; AE; SJG)**

RESPONSE: 2. The Department believes that the affected public utilities can propose programs within the mandated three month timeframe. The utilities can draw on the experiences of the industry as well as university and the federal university research laboratory system such as Lawrence Livermore and Oakridge National Laboratories.

COMMENT: 3. No conservation plan until approval by the DOE. All existing conservation programs would have to be terminated until such time as DOE approval has been obtained. **(PSE&G; AE; SJG)**

RESPONSE: 3. The Department does not agree that all existing programs must be unilaterally discontinued. As a result the regulation has been changed. The regulations specifically provide at NJAC 14A:20-1.3(b) that existing programs will continue until such time as the Department orders a new program to replace it.

14A:20-1.4 ENERGY CONSERVATION PLANS: SERVICES PROVIDED

COMMENT: 1. **5% HESP audits**

(a) Arbitrary—5% is void of substantive evaluation of the market for conservation measures. No consideration for specific circumstances of the utility or cost-benefit efforts on its customers and stockholders. Fails to recognize the financial relationship between promotional activity and customer response. **(PSE&G; REC; JCP&L; AE; EG; FCM)**

(b) Unjustified and expensive—The 5% penetration rate does not justify the large increased expense to ratepayers. Fails to recognize the conservation measures already undertaken by consumers over the past decade. HESP audit program cost would increase. (SJG increase almost about five times the current levels, from $102,600 to $505,200) also will need increased staffing. **(EG; SJG)**

(c) Unrealistic—Should reflect a more realistic individual company requirement and realistic market penetration capabilities. **(AE)**

(d) Recommendation—Should be set by DOE only after consulting with affected utilities. Should emphasize the service and timely response to the application. **(FMC)** Should be a goal. **(Sen. Dalton)**

RESPONSE: 1. This comment has been rejected. It is a misreading of these regulations to say that there will be no consideration for specific circumstances of each utility or cost benefits efforts on its customers and stockholders. The regulations provide for an evaluation process by each utility, the public, and the Department prior to the implementation of each plan. The utilities have progressed since the start of the HESP audits. The figures available to the department indicate that the utilities should be able to reach the goal of 5% HESP audits since in 1984 they almost doubled the number of audits done in 1983 and the goal of 5% is somewhat more than twice as many as were audited in 1984.

(b) This comment has been rejected. The expense by utilities for the required conservation program will be, in comparison to other expenses, a small percentage of each utility's annual budget. Each conservation program will be evaluated and examined for its costs and benefits to individual customer, the utility and society in general. The policy of the department is to continue and increase conservation efforts with a corolary increase in conservation jobs in the State.

(c) This comment has been rejected. This is a misreading of the regulations since each utility will prepare its own program according to its own service area and circumstances.

(d) This is exactly what the regulations propose to do. Advertising the service and timely response to the application are inherent in the regulations. The regulations have been clarified to indicate that the 5% completion rate is a goal.

COMMENT: 2. **5% CACS Audits**

(a) Inconsistency of regulations—NJAC 14A:22-2.1(c) requires a 2% completion rate per year for CACS audits. Inconsistent to increase the 2% rate when there has been virtually no experience with this program. **(AE; NJNG)**

(b) Unrealistic, rigid, and arbitrary—It assumes that 5% of the eligible customers will desire and audit. It is extremely difficult to achieve. **(REC; JCP&L; FCM)**

(c) It should be a goal. The first year should be a base for further research and a graduated scale of percentage coverage is more reasonable. **(JCP&L; OCEC; Sen. Dalton)**

(d) Expensive—Will increase cost (South Jersey Gas—increase approximately 3 times above the current levels, from $32,800 to $91,100. **(SJG)**

RESPONSE: 2. 5% CACs Audits

(a) These regulations provide for a goal of 5% completion rate in CACs audits while the CACs regulations provide for a minimum of 2% completion rate. To the extent that there is any inconsistency in the completion rate between **N.J.A.C.** 14A:22-2.1(c) and these regulations, these regulations will supersede. The department will further review both regulations and make any necessary changes to the CACs regulations to ensure the compliance with the conservation regulations.

(b) This comment has been rejected. The department recognizes that there may be customers who may not be well informed about energy audits and it therefore has provided for a marketing component. Moreover, the 5% completion rate is a goal to be addressed by each utility in its planning process. see 1(a) above.

(c) This comment has been accepted. The intent of the department was to make the 5% a goal. The regulations have been clarified to show that each utility is to plan to reach the 5% annual energy audit completion rates unless there are sufficient countervailing reasons.

(d) This comment has been rejected. See response to 1(b) above.

COMMENT: 3. Need a highly concentrated educational program prior to the 5% requirement. **(FCM)**

RESPONSE: 3. The regulations provide for a marketing component for each utility conservation program.

COMMENT: 4. 5% incentives for purchase, installation and/or use of energy conservation measures.

(a) Unfair to early participants who will be penalized by not waiting for greater incentives. **(AE)**

(b) No criteria to identify who should receive zero interest as opposed to low interest loans. **(SJG)**

(c) Unreasonable and rigid. **(AC)**

(d) Applies to all non-gas heated household service areas. **(JCP&L)**

(e) Too costly for residential e.g. 30 million cost for residential units which produce about $500 million revenue per year. (South Jersey Gas—1,200 direct utilization investment will mean 7.5 times increase from $106,800 to $756,800. Zero and low interest loans will result in over 11 million dollars in loans—5,650 loans at $2,000 each.) **(JCP&L; SJG)**

RESPONSE: 4. (a) This comment has been rejected. These early participants have benefited by their conservation efforts by lower energy bills. These early participants also move and buy new homes, thus they will also be eligible to participate in these programs.

(b) The regulations provide that the low or zero interest rate loans are to be provided "to all other households not eligible for direct utility investments". The regulations define those eligible for direct utility investments as "low income households. The specifics of the exact income guidelines regarding who get a low interest or zero rate loan are to be set by each utility and reviewed by the department.

(c) This comment has been rejected. These programs are to be developed by each utility after making individual assessments regarding cost benefit analysis. Moreover, the flexibility of each program will be determined by each utility.

(d) The incentives apply to both gas heated and non-gas heated household service areas.

(e) See response in 1(b) above.

COMMENT: 5. Incentives for energy efficient appliances.

(a) Unfair to have utilities and their ratepayers subsidize loans for those customers (regardless of verifiable annual household income) who can afford to obtain financing from existing sources. (**REC**) Should have a dollar limit per customer loan and income limits for low and zero interest loans (similar to oil heat loan program). Utilities should not loan to "all other households not eligible for direct investments. (**FCM**)

(b) No requirement of purchase of a more energy efficient appliance will lead to misuse and administration will be cumbersome and counterproductive. (**OCEC**)

(c) Regulations fail to set forth how numerous types and brands of inefficient appliances are to be valued for bounty and bill credit purposes. (**REC**) A bounty proposal should weigh the magnitude of the impact that equipment salvaged from junkyards will have on costs as part of the implementation decision to ensure that the potential burden is not cost substantial. (**Cook College**)

(d) Fails to define adequately what will be deemed an inefficient appliance. (**REC**)

(e) Cost benefit analysis should be done first based on a net avoided cost per utility dollar spent. (**JCP&L**)

(f) Difficult to police abuses. (**JCP&L**)

(g) Utilities don't want to be junkyards for all appliances or accountable for their destruction. (**JCP&L; REC**)

(h) SJG already has an equitable rebate program. The proposed rules further complicate this issue with difficult to quantify programs, which will be more difficult to police and will not serve in the best interest of the consumers. (**SJG**)

RESPONSE: 5. (a) Utilities should develop guidelines to their requirements according to the population profile in their service territory. The goal is energy conservation and as such programs must include all citizens to be effective.

(b) Utilities have already developed programs in other states that can be used as patterns for New Jersey's needs.

(c) The inefficient appliance bounty program must be designed by the utilities to provide a suitable value for inefficient appliances and safeguards against junk.

(d) The determination of inefficiency should be based on equipment available in the marketplace with an analysis done by the utility on a cost-benefit basis.

(e) True, this will be one of the items submitted by each utility. Conceivably DOE could select the best or allow individual approaches based on load profile.

(f) The abuse of any program is always a danger, but properly structured this will be less of a problem than existing theft of service which runs into the millions statewide.

(g) See 5(c) & 5(f).

(h) South Jersey's program may be fine, the Department wants suitable oversight.

COMMENT: 6. Counterproductive to radically increase current programs without cost-benefit task force analysis. (**DCED**)

RESPONSE: 6. The "Task Force" can continue its work, however, these conservation regulations cannot be held up awaiting a long term study when the need is now.

COMMENT: 7. Should have legislation requiring appliance and equipment manufacturers to meet minimum energy efficiency standards. (**OCEC**)

RESPONSE: 7. Yes, the Department would like to see such legislation as well, but in the interim the regulations will act as a substitute.

COMMENT: 8. Special incentives should be provided for utilities that exceed the 5% goals. (**League of Women Voters-LWV**) Regulations do not define the additional incentives to achieve a 5% completion rate. (**NJNG**)

RESPONSE: 8. The 5% completion rate is a goal and the incentives for exceeding can be developed independent of the adoption of the regulations. The additional incentives will only be developed in response to a perceived failure to make good faith attempt at achieving the goal.

COMMENT: 9. Whether the cost of alternative technologies should be absorbed in the rate base? (**OCEC**)

RESPONSE: 9. Alternative technologies will have to meet the same cost-benefit analysis as other conservation measures.

COMMENT: 10. 14A:20-1.4(a)4.ii.—Much of the data required relative to cost and saving was to be taken by the State Cost-Benefit Task Force (Task Force) and requires extensive time to gather and analyze. (**PSE&G**)

RESPONSE: 10. There are numerous studies in existence from which aggressive conservation programs can be developed without awaiting the imprimatur of the slow moving State-Cost-Benefit Task Force.

COMMENT: 11. 1.4(a)5. Wrong premise and incorrect conclusion. Load management programs that shift loads to off peak period can be extremely cos effective because they delay the construction of new generating facilities and thus maintain lower rates for all customers. The statement should be restructured to recognize the system benefits from optimizing the load shape of the utility (that is, more reliable and economical dispatch of the system's units.) (**REC; AE**)

RESPONSE: 11. 1.4(a)(5) The Department has clarified the type of load management allowed as opposed to preferred.

COMMENT: 12. 1.4(a)(6) Definition of "alternative technologies" should be concise and be required to meet the **non-participant cost effectiveness** test. The words "cost effective" should be inserted before the word alternative technologies. (**AE; REC; AEC; Cook College**)

RESPONSE: 12. See 9 above.

COMMENT: 13. 1.4(a)3.iv. Gives DOE authority to **capriciously** assign incentives to "under achieving" utilities. This is not constructive to any energy master plan because it provides additional potential and unanticipated costs. (**SJGC**)

RESPONSE: 13. Capriciousness is not an issue, obviously only proven incentives will be assigned to "under achieving" utilities.

COMMENT: 14. 3.1 **Arbitrary**—These investments will likely vary significantly for apartments and single family

homes. Some may be considerably higher than $1,000. The basis for the $1,000 limit requires examination. (**AE**)

RESPONSE: 14. 3.i. The $1000 limit is suitable to avoid burdening ratepayers with excessive costs for low income recipients while providing a substantial level of conservation.

14A:20-1.5 ENERGY CONSERVATION PLANS: MARKETING STRATEGY

COMMENT: 1. Barriers to marketing strategy. Marketing approaches that may be effective for the general population do not work for certain subgroups, for example, fear, ignorance, suspicion and systems of values and logical processes that differ from the norm. Utilities might benefit by counseling, joining with or otherwise supporting community and other groups that have such expertise. Should also consider studies indicating that mistrust of utilities among the general public is partly to blame for loss of acceptance of conservation offerings. (**Cook College**)

RESPONSE: 1. The Department agrees in part. Specialized marketing approaches for subgroups could be required in NJAC 14A:20-1.5. This section requires the utilities to submit for NJDOE approval marketing strategies for the required conservation programs. The Department does not agree that separate studies are needed to document the distrust of the utilities by many subgroups.

COMMENT: 2. This requirement goes beyond current abilities and resources of utilities. The utilities will have to seek outside professional assistance. (**SJG**)

RESPONSE: 2. If the utilities need outside assistance to enhance the effectiveness of the conservation programs then this need can be recognized in the Department's approval document. This approval carries an administrative presumption to the Board of Public Utilities that these expenses were properly incurred by the utility.

ENERGY CONSERVATION PLANS: CONTRACTOR PARTICIPATION 14A:20-1.6

COMMENT: 1. The utilities should select a contractor or subcontractor without an open bidding procedure in cases where the scope of the conservation services to be provided or the number of potential recipients of such services may not justify the cost of selecting a contractor or subcontractor on basis of an open bidding procedure. (**REC**)

RESPONSE: 1. The Department disagrees. The experience with previous conservation programs and antitrust concerns voiced by the Federal Trade Commission, USDOE, U.S. Small Business Administration, and other state contractor organizations have convinced the Department that open competitive bidding is the best approach in the expanding market for conservation materials and services. The open competitive process for the utility managed conservation programs required by the regulations is not the equivalent of the low bid. With an ever expanding number of firms in this market open competitive bidding will ensure the best products and services at the best price.

COMMENT: 2. Procurement process must impose high standards of contractor qualifications and work quality and err on side of high standards vis-a-vis comprehensiveness. (**JCP&L**)

RESPONSE: 2. The Department agrees in principle however that work quality and the requirement to increase market penetration levels are not necessarily inconsistent.

COMMENT: 3. The regulation appears to be more concerned with protecting contractor interests than customer interests by selection of the most cost effective contractor. (**PSE&G**)

RESPONSE: 3. The Department disagrees. In a maturing market for conservation services and materials many more small to medium sized contractors will be able to provide quality work. The Department is however committed to closely monitoring consumer interests through its HESP contractor lists and other mechanisms as the need for them become evident.

ENERGY CONSERVATION PLANS: RECIPIENTS OF SERVICES 14A:20-1.7

COMMENT: 1. Unfair, unjustified, and illegal subsidizations to require electric utilities to include oil space heating customers in their plans. Should be provided by fuel oil distributors. A new burner, boiler or furnace for an oil-heated customer is only distantly beneficial to the utility customer and thus it is unfair for him to help pay for it. Direct beneficiaries of any conservation program should pay for all associated costs. (**PSE&G; JCP&L; REC; FCM**)

RESPONSE: 1. This issue is fully discussed in the Energy Master Plan Chapter 1 Part Two Energy Conservation.

The Department strongly disagrees. Fundamentally there is no societal or other difference between oil saved in the home and oil which is saved in electric power generation—except that saving oil through conservation costs a fraction of what it takes to save oil by building power plants. It is one sided and anomalous to assume that the benefits of huge utility investments in coal and nuclear power plants, made in part to save oil and at the same time to deny much smaller utility investments in saved energy which lead to almost instant and long term savings for both oil heating customer and society.

COMMENT: 2. This section should include a provision that the HESP audit for oil-heated customers include the combustion efficiency test/boiler evaluation. (**FCM**)

RESPONSE: 2. The Home Energy Savings Program audit already includes a provision for the combustion efficiency/boiler evaluation. This provision was included in the January 1984 HESP Program Announcement.

COMMENT: 3. Unjust enrichment—Owners of buildings and/or properties receiving the benefits of conservation activities should pay **all** the costs involved in profits result. (**NJBIA**)

RESPONSE: 3. Accepting this comment would defeat the purpose of utility involvement in conservation programs. Utility involvement is to subsidize the programs and provide for a form of one stop shopping for conservation services.

COMMENT: 4. Assistance should be made available to all users—residential, commercial and industrial—to spread the benefits and to ease the impact on non-residential users. (**NJBIA**)

RESPONSE: 4. The Commercial and Apartment Conservation Service (CACS) provides coverage where the HESP program does not.

ENERGY CONSERVATION PLAN: RELATIONSHIPS TO SYSTEM PLANNING 14A:20-1.8

COMMENT: 1. **Duplicative effort**—The cost-benefits assessment of the conservation program is **a duplication** of the effort currently underway with the Task Force. (**PSE&G; JCP&L; NJNG**)

RESPONSE: 1. The benefit cost study currently being considered by the State Agency/Public Utility Conservation Analysis Team (CATS) will only evaluate existing programs. This is viewed as a three year effort and the window for energy conservation to make a difference in utility system planning cannot wait until this analysis is finished. To be sure that

valuable data and analysis will be produced during the course of the study will aid the Department in evaluating the program to be submitted under these regulations. To wait until the project is finished is to severely cripple the impact of conservation in the state.

COMMENT: 2. **Premature**—Regulations require a significant increase in conservation expenditures without proper costs-benefits analysis which contradict the Task Force intent to determine the costs-benefits of conservation programs before any decision is made to rapidly expand them. **(PSE&G; AE; SJGC; JCP&L; NJNG; EG)**

RESPONSE: 2. As an overall percentage of revenues or expenses the expenditures on these new programs will be small. If programs are approved by the NJDOE the presumption for purposes of BPU rate making treatment will be that the expenses were prudently incurred.

COMMENT: 3. Lack of mutual development and agreement upon conservation programs to be implemented. Plan tends to ignore the existence of extensive utility conservation activities and experience gained in the operation of those programs. A conservation program's contents and goals should be developed via a process which reflects significant impact, discussion and negotiations between the utilities and regulatory agencies in a non-adversarial format. Lack of specific language addressing this issue will lend to programs not wanted by customers, not doable by the utilities or unreasonably expensive to implement. **(PSE&G; JCP&L; EG)**

RESPONSE: 3. The Department agrees that it should publish guidelines for the utilities to assist them in program submissions. Discussion but not negotiation may be appropriate after the programs have been submitted for NJDOE approval.

COMMENT: 4. Extremely complex and labor intensive to provide the analyses required by this subsection to assess the effort of the plan on the peak load and energy forecasts, construction, fuel purchase, and capacity expansion plans and overall investment in general of the utility. **(AE)**

RESPONSE: 4. Department Policy as stated in these regulations and the Energy Master Plan is that if conservation is to be considered as an energy source then it must be factored into utility system planning. It has not been documented that including conservation into the planning process must of necessity significantly add to costs in this area. However if conservation planning achieves its stated goals the saved costs for consumers and society at large can easily offset the costs of a complex planning process to document the effects of conservation in utility system wide planning.

COMMENT: 5. Cannot determine the potential capacity and energy efforts of the plan until the benefits of the conservation programs are quantified and tabulated. Request is made for a delay in implementing this requirement at least until the conservation analysis team's consultant can provide the utilities with specific energy and capacity impacts. **(AE)**

RESPONSE: 5. The Department believes that utility planning is as much arts as science. It is unwise under any circumstances to await the results of the CATS study before trying new approaches to energy conservation. Also adequate documentation exists to prove that the types of programs which are required by these regulations save energy. In every case where the benefit cost of these programs is raised it will always be dependent on certain assumptions on the economy in general. The quantitative tools to gauge the relative success of conservation programs in the state already exist. It is the role of the CATS to refine these processes.

COMMENT: 6. Not a prudent business management decision to require a significant increase in program targets without first making a determination of a costs-benefits analysis. **(JCP&L)**

RESPONSE: 6. The regulations are designed to serve the public interest and as such the utilities are not required to make strict benefit costs analysis to determine the appropriateness of these programs. That role more properly belongs to public agencies.

COMMENT: 7. These proposed regulations should be submitted to the Laboratory Advisory Committee of the Center for Energy and Environmental Studies at Princeton for their evaluation and comments. **(NJNG)**

RESPONSE: 7. The Energy Conservation Laboratory (Princeton University) can be used in an advisory capacity. However the goal of the Laboratory is to investigate new conservation techniques and not become part of the regulatory process.

COMMENT: 8. Regulations lack appropriate monitoring provisions. Should monitor to ensure that utilities' lower operating costs are passed on to the consumer. **(Burlington County Department of Economic Development-BCDED)**

RESPONSE: 8. The Department's intent with these regulations is to stimulate market penetration of energy conservation. Documented energy savings will be the responsibility of the BPU to ensure that the benefits of these programs are fairly apportioned to consumers.

COMMENT: 9. Should review the product of conservation strategies to quantify the costs-benefits to consumers. This can result in incentives to encourage broad based participation in energy efficiency programs. **(BCDED)**

RESPONSE: 9. The Department agrees in part. The effectiveness of existing and new conservation programs will be monitored for the purposes of long term energy planning. Adequate documentation already exists to promote conservation as a cost benefit mechanism.

14A:20-1.9 PLAN FOR PROPER RATE TREATMENT

COMMENT: 1. Regulations should detail the financial incentives and financial penalties and disincentives before the utilities are required to file their plan. This will allow them to establish a cost effective plan. **(REC)**

COMMENT: 2. Utilities should receive deferred accounting treatment with interest on the unamortized balance on all energy conservation costs and expenses incurred by the utilities. **(REC)**

RESPONSE: 1. and 2. The proposed section 14A:20-1.9, referring to the BPU rate treatment plan, has been eliminated and replaced with a provision outlining the Department's decision and enforcement policies. As discussed in earlier sections dealing with the DOE's legal authority, the DOE, not the BPU, will oversee, examine, approve and enforce utility-submitted plans. The amended section 14A:20-1.9 provides for a DOE decision and timetable for the BPU to react to that decision. The BPU is free to examine the conservation plans consistent with their statutory authority. Therefore comments regarding BPU rate treatment are no longer appropriate.

COMMENT: 3. Real regulation of a utility's conservation effort must be on a case-by-case basis to ensure that the ratepayer is receiving the most for his or her dollar. **(FCM)**

COMMENT: 4. Must have a careful inspection of programs, dollars, past results, and projected results to guarantee that the utility is not making money in the name of conservation.

RESPONSE: 3. and 4. DOE believes that thorough examination and approval of submitted conservation plans, together with aggressive enforcement of those plans will ensure ratepayers of maximum benefit from conservation efforts.

COMMENT: 5. Difficult to conceive how a yearly plan adopted by the BPU can deal with the cost-effectiveness of conservation programs except on the broadest level. (**FCM**)

RESPONSE: 5. See answer 1, above.

COMMMENT: 6. Targets and goals must be both reasonable and realistic otherwise imposition of disincentive and financial penalties for failure to achieve an arbitrary goal or target is unjustified, counterproductive and defeats the purpose of the program. (**AE**)

RESPONSE: 6. See answer 1, above. Again, enforcement powers will be exercised by the Department of Energy.

ADDITIONAL GENERAL POINTS

Comment: 1. Support the energy conservation regulations.

(a) League of Women Voters of New Jersey
(b) Monmouth County Board of Social Services
(c) Senator Stockman
(d) Senator Dalton
(e) Utility Task Force
(f) New Jersey Federation of Senior Citizens

RESPONSE: 1. The Department agrees.

COMMENT: 2. Recommend that priority be given to **use** of **renewable sources of energy** and to environmentally sound use of **coal.** (**LWV**)

RESPONSE: 2. The Department agrees.

COMMENT: 3. **Incentives** should be given to **consumers** and **utilities** to **increase** the **use** of **solar energy, wind, cogeneration** and the use of **coal.** (**LWV**)

RESPONSE: 3. The Department agrees.

COMMENT: 4. Query: Are municipal electric utilities exempt from the energy conservation plan requirements? (**Borough of Park Ridge-BPR**)

—**Borough of Park Ridge** is one of **8** municipalities in the State having its own municipal electric system (they purchase bulk high voltage electricity from PSE&G)

RESPONSE: 4. Municipal electric utilities are exempt.

COMMENT: 5. New Jersey Business and Industry Association's Energy Council offers its assistance to the DOE in making evaluations and cost/benefit determinations. (**NJBIA**)

RESPONSE: 5. The Department is pleased to accept NJBIA's offer.

COMMENT: 6. May the BPU adopt a rate treatment plan on its own initiative?

Nothing precludes the BPU from developing some type of plan, but there are limits to its ability to do so.

BPU must always consider in the context of any rate proceeding the reasonableness of a utility's expenses incurred during the period under review, and it must always be positioned to hear any challenges to these expenses. Thus, BPU can't state or guarantee in advance that it would allow full rate treatment for all expenses incurred as a result of DOE-ordered conservation programs. The furthest extent to which the BPU could go would be to state in a general way that it would look favorably upon the types of expenses that could be incurred under the DOE regulations.

Under the proposed arrangement the utilities cannot attain the level of confidence which exist under the present practice (that the expenses they incur with programs will be approved in full in a subsequent rate proceeding) because there will be no BPU order issued approving the specific program.

DOE should present its views of what constitute an approximate conservation program through the Energy Master Plan, and DOE should then, pursuant to 27F-15, advocate its position before the BPU (consistent with DOE's advisory role.) (**NJUA**)

RESPONSE: 6. A matter of general concern is the whether the Board of Public Utilities could develop a rate treatment plan for conservation programs independent of the Department of Energy.

The Board of Public Utilities in this regard must defer to the DOE regulations in the same regard that it defers to and indeed incorporates by reference the regulatory requirements of other state agencies. The most notable example of this procedure has been the deference accorded to the Department of Environmental Protection requirements for energy facilities. These requirements are not even reviewed by the Board even though they involve substantial expenditures. The BPU in these instances has confined itself to how these costs are apportioned between customer classes and stockholders.

The comment of NJUA again confuses the DOE's powers pursuant to **N.J.S.A.** 52:27F-11(g) and 52:27F-15(b). The utilities themselves are to design plans suitable for their own service territories in conformance with the conservation regulations. The DOE possesses statutory power under **N.J.S.A.** 52:27F-11(g) to "design, implement and enforce a program for energy conservation in commercial, industrial and residential facilities." This is a direct power exclusive of BPU interference. In addition, the powers granted to the DOE through **N.J.S.A.** 52:27F-15(b) [Master Plan] provide the Department with an indirect route to conservation through other state agencies. In no case must the Department of Energy advocate its position before the BPU.

COMMENT: 7. Does PURPA offer any guidance in discerning DOE's authority vis-a-vis the BPU?

The Public Utility Regulatory Policies Act of 1978 is a federal statute specifically requiring state regulatory commissions like the BPU to undertake certain activities, while the DOE Act did not give the same type of power to DOE and, in effect, clearly limited DOE's role to an advisory one.

PURPA does not necessarily or inferentially preempt state utility regulations. (**NJUA**)

RESPONSE: 7. This comment is an argument for statutory interpretation by analogy by its intent to limit the conservation authority of the Department under its own statute. The analogy is misplaced as the statutory language of N.J.S.A. 52:27F-1 et seq. in no way confines the authority of the Department in conservation programs.

COMMENT: 8. Consider a provision to insure that the energy savings which a landlord would enjoy, would be reflected in lower rents or at least stabilized rents. (**Sen. Stockman**)

RESPONSE: 8. The Department agrees in principle but the implementation of this provision should be subject to further analysis.

COMMENT: 9. Require utility companies to implement a quality control system to insure that measures are properly done. (**Sen. Stockman**)

RESPONSE: 9. The Department currently certifies inspectors through its HESP program. These inspectors are used to verify the quality of work performed under both the HESP and all utility conservation programs. In cases where the utility uses two subcontractors for its franchise area each subcontractor is required to inspect the work of the other. In addition some utilities use their own NJDOE certified staff to perform the inspections.

COMMMENT: 10. Should mandate a time period for completion of audit after application by the customer. (FCM)

RESPONSE: 10. The Department currently requires that the Utility perform the requested services within 30 days after the initial request or notify the customer and the Department that the requested services will be performed within 60 days of the original request.

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

CHAPTER 20
ENERGY CONSERVATION PROGRAM DEVELOPMENT AND PUBLIC UTILITY PLANNING EVALUATIONS

SUBCHAPTER 1. PUBLIC UTILITY PROGRAMS

14A:20-1.1 Purpose and Scope

The purpose of the regulations in this subchapter is to promote the rapid and effective installation and use of cost-effective energy conservation measures, devices and innovations in the houses and apartments of New Jersey residents. The principal means employed by these regulations is a program of investments and loans by electric and gas utilities, marketing strategies, economic incentives, specified annual targets, and a requirement that utilities incorporate these conservation initiatives into their planning processes.

14A:20-1.2 Definitions

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

"Alternative technologies" includes but is not limited to solar energy, both passive and active, energy storage, windmills, small-power production, cogeneration, district heating, and other forms of energy conservation that can be attained through the more efficient use of energy and/or the use of renewable energy sources;

"Apartment building" means an apartment building as defined in N.J.A.C. 14A:22-1.1.

"BPU" means the New Jersey Board of Public Utilities.

"CACS" means the Commercial and Apartment Conservation Service Program, N.J.A.C. 14:22.; ***1.1 et seq.;***

"Completion rate" means the percentage ratio of the annual number of households who have or will receive audit, grant, loan or other incentive to the total number of households eligible to receive audit, grant, loan or other incentives respectively.

"Costs and benefits" means direct and indirect costs and benefits to society at large, participating customers, non-participating customers and the utilities.

"Cost effective" means any energy conservation measure which *[as a result of a HESP or CACS audit is found to]* ***the department finds will*** have a payback of 10 years or less *[, or such other measure as may be approved by the department]*.

"Department" means the New Jersey Department of Energy.

"Direct utility investments" means monies expended or to be expended by a utility for the installation of conservation measures and devices, deemed cost-effective by the department, at no direct cost to the owner or resident in the unit.

"Energy conservation" means the reduction of energy consumption or increase in energy efficiency by any means, method, technology, or practice, including but not limited to the use of alternative energy sources.

"Energy conservation measures" means the program measures specified in N.J.A.C. 14A:21-3.5(a) for residential buildings, the program measures specified in N.J.A.C. 14A:22-3.5(a) for apartment buildings, and other cost effective measures identified by the department.

"Energy conservation plan" or "plan" means any plan, program, operation or procedure developed or implemented by a public utility *[or required by a state instrumentality to be developed or implemented by a public utility as specified in the Energy Master Plan pursuant to N.J.S.A. 52:27F-(A) that promotes energy conservation]* ***pursuant to these regulations.***

"Energy efficient appliance" includes, but shall not be limited to, ***high efficiency*** air conditioners, heat pumps, water heaters, space heating units, refrigerators and refrigerator/freezers.

"HESP" means the Home Energy Savings Program, N.J.A.C. 14A:21. ***1.1 et seq.***.

"Incentives" means inducements to achieve participation in any conservation plan or aspect thereof, including but not limited to free samples, cash rebates, utility bill credits, grants of energy conservation measures, and loans.

"Low income" means annual income of less than or equal to *[125 percent]* ***150 percent*** of poverty level, including all persons eligible for Lifeline assistance pursuant to N.J.S.A. 48:2-29.15 et seq.

"Public utility" means all electric and natural gas public utilities as defined by N.J.S.A. 48:2-13.

"Residential building" means a residential building as defined in N.J.A.C. 14A:21-1.1.

14A:20-1.3 Timing of submissions

(a) Commencing no later than 90 days after the adoption of these regulations, and every two years thereafter unless directed to do otherwise by the department, each public utility shall submit to the department for review and approval an energy conservation plan meeting the requirements of N.J.A.C. 14A:20-1.4 ***1.5, 1.6, 1.7 and 1.8***.

(b) No energy conservation plan shall be implemented by a public utility until such plan has been approved by the department ***except that all utility conservation programs currently in effect shall continue until such time as the department orders a new program pursuant to these regulations.***

(c) Once approved, the plan shall remain in effect for two years or until a new plan is required and approved by the department.

14A:20-1.4 Energy conservation plans: Services provided

(a) All energy conservation plans ***submitted by a utility for department review shall include, but not be limited to,*** *[shall provide]* the following:

1. Home Energy Savings Program (HESP) energy audits specified in N.J.A.C. 14A:21 ***-1.1 et seq.*** Each public utility shall ***plan to*** achieve ***at least*** a five percent annual energy audit completion rate ***unless the department approves otherwise***.

2. Commercial and Apartment Conservation Service (CACS) energy audits specified in N.J.A.C. 14A:22. Each public utility shall ***plan to*** achieve at least a five percent annual energy audit completion rate ***unless the department approves otherwise***.

3. Incentives for purchase, installation and/or use of energy conservation measures. Each public utility shall ***plan to*** provide incentives for the purchase, installation and/or use of ***a variety and mix of cost-effective*** conservation measures. Each public utility shall ***plan to*** achieve at least a five percent annual completion rate for providing such incentives ***unless the department approves otherwise*.** The incentives shall include ***, but not be limited to,*** the following:

i. Direct utility investments in residential units. Each public utility shall provide direct utility investment up to $1000 per residential unit for the installation of cost effective conservation measures in residential units where low income households reside.

ii. Loans. Each public utility shall provide low or zero interest rate loans for the installation of cost effective conservation measures to all other households not eligible for direct utility investments.

iii. Additional incentives. Each public utility shall offer such additional incentives as may be necessary to achieve the five percent annual completion rate for investments and loans specified in (a)3i and (a)3ii above.

iv. Other incentives and assistance. The department may require public utilities to provide such other incentives and assistance as it deems necessary to encourage the purchase, installation, and ***the maximum*** use of energy conservation measures.

4. Incentives for the purchase, installation and/or use of energy efficient appliances.

i. Each public utility shall ***plan to*** provide incentives for the use of energy efficient appliances and the retiring of inefficient appliances. The incentives shall be offered to ***all*** residential households. The department may require that incentives also be provided to ***such*** commercial and industrial customers ***as the department determines to be necessary, feasible and cost effective*.** Each public utility shall identify the energy efficient appliances, in addition to those specified in N.J.A.C. 14A:20-1.2 (air conditioners, high efficiency water heaters, space heating units and refrigerator/freezers), and the types of incentives that ***it*** will *[be]* ***plan to*** provide*[d]*. Incentive shall include, but need not be limited to, the following:

(1) Rebates ***, vouchers*** *[or]* bill credits ***or other incentives*** for the purchase of energy efficient appliances ***with a higher capital cost than less efficient appliances*;** and

(2) Bounties ***, vouchers*** or bill credits for the surrender or termination of use of inefficient appliances. No purchase of a new energy efficient appliance shall be required as a condition for receipt of the bounty ***, voucher*** or bill credit specified herein ***, unless the department approves such requirement*.**

ii. Each public utility shall calculate the relative costs and savings for each appliance type at various efficiency levels, times of operation or use and costs of power and shall include same in the energy conservation plan.

iii. The department may require public utilities to include additional energy efficiency appliances or to provide such other incentives as it deems necessary to encourage the ***maximum feasible and cost-effective*** use of energy efficient appliances.

5. Load management programs. Such program shall be designed to result in lower peak and base load usage, rather than the mere shift of loads to off-peak periods ***, unless the department approves otherwise*.**

6. Programs designed to promote energy conservation through the use of alternative technologies.

14A:20-1.5 Energy conservation plans: Marketing strategy

(a) Each energy conservation plan shall include the following:

1. A description of the marketing strategy to be used to market the services specified in N.J.A.C. 14A:20-1.4. The marketing strategy shall include, but not be limited to, a description of the types of advertising, promotional efforts, outreach services and informational materials to be used, and the frequency with which the various aspects of the marketing strategy will be employed.

2. A description of the management organization, personnel, recruitment and training programs that will be offered to personnel who will provide any of the services specified in N.J.A.C. 14A:20-1.4.

3. A description of the efforts that will be made to target priority groups, including Lifeline recipients, the handicapped, low income persons, renters, areas with a need for specific attention owing to special consumption problems (for example, high seasonal demand; use of electric resistance heating), and such other priority groups as the department may identify for special targeting efforts.

14A:20-1.6 Energy conservation plans: Contractor participaton

(a) Public utilities shall utilize contractors and subcontractors to perform the work and services specified in the energy conservation plans in a manner that will facilitate and promote competition. The energy conservation plans, with respect to contractor and subcontractor participation, shall specify the following:

1. The manner in which selection will be made. Unless the department specifically states otherwise, all selection shall be made on the basis of an open bidding procedure.

2. The criteria on which bidding procedure will be based. Bidding procedure criteria shall be drawn in such a manner as to permit maximum participation by minority-owned and small businesses as contractors and subcontractors.

3. Whenever contractors and subcontractors are not to be used to perform work or services, the energy conservation plan shall state the reasons therefore, including the economic or other factors justifying the exclusion of contractors and subcontractors from participation.

14A:20-1.7 Energy conservation plans: Recipients of services

(a) Public utilities shall offer to provide the work and services specified in the energy conservation plans *[as follows]* ***to the following, unless the department determines otherwise:***

1. An electric utility shall provide the work and services, which shall be specified in its energy conservation plan, to customers within its service territory that receive electric space heating service or utilize oil for space heating purposes, except as provided below.

2. A natural gas utility shall provide the work and services, which shall be specified in its energy conservation plan, to customers within its service territory that receive natural gas service for space heat.

14A:20-1.8 Energy conservation plans: Relationship to system planning

(a) Each energy conservation plan shall contain an assessment of the effect of the plan on the overall peak, load and energy demand forecasts, construction plans, fuel purchase plans, capacity expansion plans of the utility and the overall investement agenda of the public utility ***, and such other factors as are found in N.J.S.A. 52:27F-18(a).***

(b) The analysis shall include the following:

1. An examination of the costs and benefits to the individual public utility customer (participating and non-participating), the public utility and to society in general ***of the utility's energy conservation plans.*** The analysis shall include a description of the forecasting methodology and the effect of the plan on the following:

i. Electric utilities:

(1) Purchase power agreements ***(short-range, long-range, including purchases from non-utilities)***;

(2) Capacity Plan ***(electrical generating capacity, long-range plans for additions and retirements)***;

(3) Wheeling Arrangements ***(especially for non-utility sources)***;

(4) System Reliability ***(reserve margins, efficiency of electrical generation and conservation)***;

(5) Transmission facility plans (on greater than 69KV***, needs for new or altered capacity)***;

[(6) Forecast Methodology;]

[(7)] ***(6)*** Forecasts, energy peak loand and load factors ***for each of the next 15 years***;

[(8)] ***(7)*** Load Curves (daily, monthly and annual) *[.]*;

***(8)* Price and cost information (comparative cost and rate impacts of the above)**

(9) Types and quantities of fuel use.*

ii. Natural gas:

(1) Displacement by purchase;

(2) System load and load factors;

(3) Projected sales;

(4) Facility operation or reliability;

(5) Load curves (daily, monthly, annual);

(6) Storage capacity;

(7) Price and cost factors.

(c) An evaluation shall be conducted as follows:

1. After a public information hearing ***, or such other hearings as the department orders***, the Department shall prepare a*[n]* ***report and*** evaluation on the adequacy of *[the]* ***each*** public utility conservation plan *[submissions]* within 60 days after the close of the public hearing record.

2. The ***report and*** evaluation *[of the conservation plans' effect on the submissions required by N.J.A.C. 14A:20-1.7(a)(b)]* shall be prepared by the department within 60 days after the *[evaluations specified in subsection (c)i above]* ***close of the public hearing, or such other time as the department shall specify in writing at the close of said 60 days.***

3. The ***report and*** evaluation shall be forwarded to the Board of Public Utilities for compliance of these programs with the Energy Master Plan pursuant to N.J.S.A. 52:27F-15(a)(b).

(d) The department reserves the right to authorize or require utilities to comply in stages with this subchapter in order to further the purposes of the regulations.

[14A:20-1.9 Plan for proper rate treatment]

[The BPU shall, within 90 days of the effective date of this subchapter, and at least annually thereafter, prepare and submit a plan to the Department for the proper rate treatment of energy conservation investments, costs and expenses incurred by public utilities as they comply with this chapter. The plan shall include but need not be limited to financial incentives to promote the achievement of cost-effective energy conservation goals and targets, and financial penalties and disincentives for the failure to achieve these goals and targets.]

14A:20-1.9 Departmental decision and enforcement

The department shall approve, approve with modifications, or reject each utility's energy conservation plans upon the completion of the report required by N.J.A.C. 14A:20-1.8(c). The department shall then transmit the utility conservation plan to the BPU for review consistent with the BPU's statutory authority. The BPU shall have 90 days to take action on the plan. No utility conservation plan may be implemented during this 90 day period. However, if within 90 days of receipt of a public utility conservation plan, the BPU does not take action then such plan shall be deemed approved by the BPU. The utility shall then implement the conservation plan immediately.

TRANSPORTATION

(a)

LOCAL AID

Urban Revitalization Special Demonstration and Emergency Project Rules

Adopted New Rule: N.J.A.C. 16:22

Proposed: October 7, 1985 at 17 N.J.R. 2385(a).
Adopted: November 8, 1985 by Jack Freidenrich, Assistant Commissioner for Engineering and Operations (State Highway Engineer).
Filed: January 6, 1986 as R.1986 d.3, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:8-1 to 9.

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): February 3, 1991.

Summary of Public Comments and Agency Response: **No comments received.**

Full text of the expired rules adopted as new rules appears in the New Jersey Administrative Code at N.J.A.C. 16:22.

TRANSPORATION OPERATIONS

(b)

Restricted Parking and Stopping Routes U.S. 1 and 9 in Union County; 20 in Bergen County; 23 in Passaic County; 27 in Middlesex County; 28 in Somerset County; U.S. 30 in Atlantic and Camden Counties; 33 in Monmouth County; 57 in Warren County; 63 in Bergen County and U.S. 130 in Salem County.

Adopted Amendments: N.J.A.C. 16:28A-1.2, 1.10, 1.15, 1.18, 1.19, 1.21, 1.23, 1.36, 1.46 and 1.67

Proposed: November 18, 1985 at 17 N.J.R. 2742(a).
Adopted: December 20, 1985 by Jarrett R. Hunt, Assistant Chief Engineer, Traffic and Local Road Design.
Filed: January 8, 1986 as R.1986 d.14, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139 and 39:4-199.

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order 66(1978): November 7, 1988.

Summary of Public Comments and Agency Response: **No comments received.**

Full text of the adoption follows.

16:28A-1.2 Route U.S. 1 and 9

(a) The certain parts of State highway Route U.S. 1 and 9 described in the subsection shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-4. (No change.)

(b) The certain parts of State highway Route U.S. 1 and 9 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established taxi stand:

1. Along the westerly (southbound) side in Palisades Borough Park, Bergen County:

i. Beginning of a point 62 feet south of the southerly curb line of Columbia Avenue Ramp extending to a point 46 feet southerly therefrom.

(c) The certain parts of State highway Route U.S. 1 and 9 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1. Along (Broad Avenue) southbound on the westerly side in Palisades Park Borough, Bergen County:

i. Far side bus stop:

(1) East Columbia Avenue—Beginning at the southerly curb line of East Columbia Avenue and extending 100 feet southerly therefrom.

2.-4. (No change.)

5. Along the southbound (westerly) side in Ridgefield Borough, Bergen County;

i. Near side bus stop:

(1) Banta Place—Beginning at the prolongation of the northerly curb line of Banta Place and extending 135 feet northerly therefrom.

6. Along the northbound (easterly) side in Linden City, Union County:

i. Near side bus stops:

(1) Clinton Street—Beginning at the southerly curb line of Clinton Street and extending 120 feet southerly therefrom.

(2) Woodlawn Avenue—Beginning at the southerly curb line of Woodlawn Avenue and extending 120 feet southerly therefrom.

ii. Far side bus stops:

(1) West Brook Drive—Beginning at the northerly curb line of West Brook Drive and extending 200 feet northerly therefrom.

(2) Gilchrist Avenue—Beginning at the northerly curb line of Gilchrist Avenue and extending 120 feet northerly therefrom.

(3) Park Avenue—Beginning at the northerly curb line of Park Avenue and extending 120 feet northerly therefrom.

iii. Mid-block bus stops:

(1) Between West Brook Drive and Willow Glade Road—Beginning at a point 1,050 feet north of the northerly curb line of West Brook Drive and extending 150 feet northerly thereof.

(2) Between Willow Glade Road and Staten Island Rapid Transit Railroad—Beginning at a point 600 feet north of the northerly curb line of Willow Glade road prolongated and extending 200 feet northerly thereof.

7. Along the southbound (westerly) side in Linden City, Union County;

i. Far side bus stops:

(1) Bachellor Avenue—Beginning at the southerly curb line of Bachellor Avenue and extending 150 feet southerly therefrom.

(2) Gilchrist Avenue—Beginning at the southerly curb line of Gilchrist Avenue prolongated and extending 120 feet southerly therefrom.

(3) Industrial Lane—Beginning at the southerly curb line of Industrial Lane and extending 120 feet southerly thereof.

ii. Near side bus stops:

(1) Park Avenue—Beginning at the northerly curb line of Park Avenue and extending 120 feet northerly therefrom.

(2) Clinton Street—Beginning at the northerly curb line of Clinton Street and extending 120 feet northerly thereof.

iii. Mid-block bus stop:

(1) Between Willow Glade Road and the Staten Island Rapid Transit Railroad—Beginning at a point 250 feet north of the northerly curb line of Willow Glade Road and extending 200 feet northerly thereof.

16:28A-1.10 Route 20

(a) (No change.)

(b) The certain parts of State highway Route 20 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1. Along the southbound (westerly) side in East Rutherford Borough, Bergen County.

i. Near side bus stop:

(1) Gotham Parkway—Beginning at the prolongation of the northerly curb line of Gotham Parkway and extending 205 feet northerly therefrom.

16:28A-1.15 Route 23

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

(c) The certain parts of State highway Route 23 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1. Along the southbound (westerly) side in Wayne Township, Passaic County:

i.-iii. (No change.)

iv. Far side bus stops—Fairfield Road:
(1) (No change.)
(2) Along Service Road—Beginning at the southerly curb line of Fairfield Road and extending 140 feet southerly therefrom.
2. Along the northbound (easterly) side in Wayne Township, Passaic County:
i. (No change.)
3.-7. (No change.)

16:28A-1.18 Route 27
(a)-(d) (No change.)
(e) The certain parts of State highway Route 27 described in this subsection shall be designated and established as "time limit parking" zones where parking is prohibited at all times except as specified. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established time limit Parking Zones:
1. Along both sides in Highland Park Borough, Middlesex County:
i. One (1) hour time limit parking along South First Avenue to Sixth Avenue from 9:00 A.M. to 6:00 P.M. daily except Sundays and Public holidays. Vehicles must park between pointed lines provided.

16:28A-1.19 Route 28
(a) (No change.)
(b) The certain parts of State highway Route 28 described in this section 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 bus stops:
1.-14. (No change.)
15. Along the eastbound (southerly) side in Somerville Borough, Somerset County:
i. Near side bus stop:
(1) Rehill Avenue—Beginning at the westerly curb line of Rehill Avenue and extending 105 feet westerly therefrom.
(c)-(e) (No change.)

16:28A-1.21 Route U.S. 30
(a) The certain parts of State highway Route U.S. 30 described in this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.
1.-5. (No change.)
6. No stopping or standing in Galloway Township, Atlantic County:
i. Along both sides:
(1) For the entire corporate limits of Galloway Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.
(b) The certain parts of State highway Route U.S. 30 described in this section 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 bus stops:
1.-15. (No change.)
16. Along the southerly side in Camden City, Camden County:
i. Mid-block bus stop:
(1) Between Broadway and 7th Street—Beginning at the easterly curb line of Broadway and extending 202 feet westerly therefrom.

16:28A-1.23 Route 33
(a)-(b) (No change.)
(c) The certain parts of State highway Route 33 described in this section 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.-4. (No change.)
5. Along the westbound (northerly) side in Neptune Township, Monmouth County:
i. Mid-block bus stop:
(1) Between Davis Avenue and Wakefield Avenue—Beginning 365 feet west of the westerly curb line of Davis Avenue and extending 135 feet westerly therefrom.
6. Along the eastbound (southerly) side in Neptune Township, Monmouth County.
i. Mid-block bus stop:
(1) Between Davis Avenue and Wakefield Avenue—Beginning 550 feet west of the prolongation of the westerly curb line of Davis Avenue and extending 135 feet westerly therefrom.

16:28A-1.36 Route 57
(a) The certain parts of State highway Route 57 described in this section are designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.
1.-2. (No change.)
3. No stopping or standing in Washington Borough, Warren County:
i.-iii. (No change.)
iv. (East Washington Avenue) southside—Beginning 200 feet east of the prolongation of the easterly curb line of Prosper Way and extending 580 feet easterly therefrom, including all ramps and connections under the jurisdiction of the Commisioner of Transportation.
4. (No change.)
(b) (No change.)

16:28A-1.46 Route U.S. 130
(a)-(b) (No change.)
(c) The certain parts of State highway Route U.S. 130 described in this subsection shall be designated and established as "Time Limit Parking" zones where parking is prohibited at all times except as specified below. 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. Fifteen (15) minutes time limit parking in Carneys Point Township, Salem County:
(i) (Shell Road) westerly—Beginning 35 feet north of the northerly curb line of Division Street to a point 50 feet northerly therefrom.

16:28A-1.67 Route 63
(a) (No change.)
(b) The certain parts of State highway Route 63 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. (No change.)
2. Along the southbound (westerly) side in Ridgefield Borough, Bergen County:

i. Far side bus stop:
(1) Fairview Terrace—Beginning at the prolongation of the southerly curb line of Fairview Terrace and extending 110 feet southerly therefrom.

(a)

Restricted Parking and Stopping Routes U.S. 46 in Essex County, 49 in Cumberland County, 57 in Warren County, 73 in Camden County and 79 in Monmouth County.

Adopted Amendments: N.J.A.C. 16:28A-1.32, 1.34, 1.36, 1.40 and 1.42

Proposed: November 18, 1985 at 17 N.J.R. 2744(a).
Adopted: December 20, 1985 by Jarrett R. Hunt, Assistant Chief Engineer, Traffic and Local Road Design.
Filed: January 8, 1986 as R.1986 d.16, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 29:4-138.1, 39:4-139 and 39:4-199.

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order 66(1978): November 7, 1988.

Summary of Public Comments and Agency Response: **No comments received.**

Full text of the adoption follows.

16:28A-1.32 Route U.S. 46
(a) The certain parts of State highway Route U.S. 46 described in this subsection shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.
1.-15. (No change.)
16. No stopping or standing in Fairfield Township, Essex County:
i. Along both sides:
(1) For the entire length within the Township of Fairfield including all ramps and connections under the jurisdiction of the Department of Transportation, except at designated bus stops.
(b) (No change.)

16:28A-1.34 Route 49
(a) The certain parts of State highway Route 49 described in this subsection are designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.
1.-2. (No change.)
3. No stopping or standing in Bridgeton City, Cumberland County:
i. Along both sides:
(1) Beginning 180 feet east of the easterly curb line of South Giles Street to a point 250 feet easterly therefrom.
ii. Along the north side:
(1) From the easterly curb line of Lawrence Street to a point 200 feet easterly therefrom.
4.-7. (No change.)
(b) (No change.)

16:28A-1.36 Route 57
(a) (No change.)
(b) The certain parts of State highway Route 57 described in this section are designated and established as "no parking" zones where parking is prohibited as specified for designated curb loading zones and at all times for loading zones. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established LOADING ZONES:
1. (No change.)
2. No parking—LOADING ZONE in Washington Borough, Warren County:
i. East Washington Street south side:
(1) Beginning at a point 35 feet east of the easterly curb line of Broad Street and extending 59 feet therefrom.

16:28A-1.40 Route 73
(a) The certain parts of State highway Route 73 described in this subsection are designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.
1.-6. (No change.)
7. No stopping or standing in Pennsauken Township, Camden County:
i. Along both sides:
(1) For the entire length in Pennsauken Township, to include all ramps, bridges and approaches under the jurisdiction of the Commissioner of Transportation.

16:28A-1.42 Route 79
(a) The certain parts of State highway Route 79 described in this subsection are designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.
1.-4. (No change.)
(b) The certain parts of State highway Route 79 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops.
1. Along the easterly (northbound) side in Marlboro Township, Monmouth County.
i. (No change.)
ii. Far side bus stop:
(1) Beginning at the northerly curb line of Newton Street and extending 120 feet northerly therefrom.

(a)

Turns
Route 35 in Old Bridge and Aberdeen Townships and Keyport Borough, Monmouth County

Adopted Amendment: N.J.A.C. 16:31-1.4

Proposed: November 4, 1985 at 17 N.J.R. 2681(a).
Adopted: December 20, 1985 by Jarrett R. Hunt, Assistant Chief Engineer, Traffic and Local Road Design.
Filed: January 8, 1986 as R.1986 d.15, **without change.**

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

Effective Date: January 8, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): November 7, 1988.

Summary of Public Comments and Agency Response: **No comments received.**

Full text of the adoption follows.

16:31-1.4 Route 35
(a) Turning movements of traffic on certain parts of State highway Route 35 described below are regulated as follows:
1. (No change.)
2. No left turn in Old Bridge and Aberdeen Townships and Keyport Borough, Monmouth County:
i. For the entire length for both directions of traffic in the undivided sections between mileposts 43.9 to 44.7 and mileposts 45.0 to 47.0.

(b)

AERONAUTICS
Airport Safety Improvement Aid

Adopted Amendment: N.J.A.C. 16:56-7.1

Proposed: August 19, 1985 at 17 N.J.R. 2017(a).
Adopted: December 23, 1985 by James A. Crawford, Assistant Commissioner for Transportation Services and Planning.
Filed: December 30, 1985 as R.1985 d.719, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-29, 6:1-44 and "Airport Safety Act of 1983" P.L. 1983, c. 264, July 11, 1983.

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): June 4, 1989.

Summary of Public Comments and Agency Response: **No comments received.**

Full text of the adoption follows.

16:56-7.1 Application for receipt of State Airport Safety Improvement Grants
(a)-(b) (No change.)
(c) For construction or installation projects the applicant shall further provide:
1. (No change.)
2. A scaled drawing certified as accurate and bearing the raised seal of a New Jersey registered land surveyor, professional planner or professional engineer. The drawing shall have the following minimum features:
i.-vi. (No change.)
vii. Location(s) use and height(s) above grade of obstruction(s) in the area contiguous to the proposed facility within at least 3,000 feet from the end of each runway or landing area and at least 500 feet from each side of the centerline of the runway(s) on landing area(s);
viii.-x. (No change.)
3.-9. (No change.)
(e) (No change.)

(c)

NEW JERSEY TRANSIT CORPORATION
Methods of Procurement

Adopted Amendment: N.J.A.C. 16:72-1.6

Proposed: December 2, 1985 at 17 N.J.R. 2867(a).
Adopted: January 3, 1986 by Jerome C. Premo, Executive Director, New Jersey Transit Corporation.
Filed: January 6, 1986 as R.1986 d.2, **without change.**

Authority: N.J.S.A. 27:25-5(e).

Effective Date: February 3, 1986
Expiration Date pursuant to Executive Order No. 66(1978): May 1, 1986.

Summary of Public Comments and Agency Response: **No comments received.**

Full text of the adoption follows.

16:72-1.6 Methods of procurement
(a) (No change.)
(b) Quotation: Except as provided in (c) and (d) below, purchases for an amount greater than $2,000.00 but not in excess of $7,500 shall be made after quotes have been obtained from at least two qualified and responsible prospective contractors. Written quotations are required for purchases in excess of $5,000.00.
(c)-(f) (No change.)

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax
New Operating Loss Carryover

Adopted New Rules: N.J.A.C. 18:7-5.12, 5.13, 5.14, 5.15 and 5.16

Proposed: September 3, 1985 at 17 N.J.R. 2096(a).
Adopted: January 13, 1986 by John R. Baldwin, Director, Division of Taxation.
Filed: January 13, 1986 as R.1986 d.26, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 54:10A-1 et seq., specifically 54:10A-27 and P.L. 1985, c.143.

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): April 2, 1989.

Summary of Public Comments and Agency Responses:

Comments received by the Division of Taxation suggested that the proposal be modified to permit the carryover of attributes from one corporate franchise to another. Because Section 4(k) of the Corporation Business Tax Act defines entire net income in terms of a single corporate entity, however, the Division responded that, without explicit statutory authority allowing the carryover of losses to other corporations such as is contained in the Internal Revenue Code, such a change in the proposal could not be made. Similarly, the underlying statutory authority did not provide for time limitations to appear in the rule during which changes in the business would occur.

Responses to both commenters pointed out that the legislation delegated to the director a fact finding function to determine the weight of the evidence in ascertaining the primary purpose behind an acquisition. The proposal was consistent with the legislative intention not to create a mechanism for trading in loss corporations. The final form of the proposal does furnish several primary criteria which the director will examine and consider to prevent the trafficking in loss corporations. In response to the suggestion that the term "acquire" be defined in terms of a bright line test of "control," the Division expressed concern that in some instances practical control of a corporation may exist without ownership of 50 percent of its voting stock or capital stock of all classes.

The reasons used in reaching the conclusions found in Example 2 in proposed rule 18:7-5.14 were also made explicit in response to a comment concerning the breadth of application of the principles underlying Example 2.

Finally, several stylistic modifications of language which clarified the intention of the rule were made as the result of comments.

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

18:7-5.12 Net operating loss deduction

A taxpayer may deduct a net operating loss carryover as defined in N.J.A.C. 18:7-5.13 in computing its entire net income before exclusions and before the net operating loss deduction.

18:7-5.13 Net operating loss carryover

(a) A net operating loss as defined in N.J.A.C. 18:7-5.15 for any ***taxable*** year ending after June 30, 1984 becomes a net operating loss carryover. The net operating loss carryover is carried to each of the succeeding taxable years and is reduced in each such succeeding year by the amount of entire net income before net operating loss deduction and before exclusions, and is further reduced to zero seven years following the year of the loss, taking into account the normal or extended due date for filing the return for the seventh year succeeding the year of the loss. The net operating loss carryover may not be carried back to any year preceding the year of the loss. For this purpose, taxable year shall mean the accounting period covered by *[and reflected by]* ***the*** taxpayer's return. In no event may a net operating loss carryover *[form the basis]* ***be used*** for a net operating loss deduction on the eighth return succeeding the loss year.

(b) The net operating loss may only be carried over by the actual corporation that sustained the loss. The net operating loss may, however, be carried over by the corporation that sustained the loss and which is the surviving corporation of a statutory merger. The net operating loss may not be carried over by a taxpayer that changes its state of incorporation or is a part of a statutory consolidation. ***Section 4(k) of the Act defines entire net income in terms of a specific corporate franchise.***

(c) Corporations acquired under Internal Revenue Code Section 338 do not lose their net operating loss carryover because the corporate franchise remains unchanged to the extent it does not fall within the provisions of N.J.A.C. 18:7-5.14.

Example 1: A domestic corporation dissolves pursuant to laws of the State of New Jersey and incorporates in another state. This newly formed corporation of another state is a new legal entity for corporation business tax purposes and the net operating loss carryover of the domestic corporation is not available to the new entity.

Example 2: The example below illustrates the net operating loss carryover for the full term of seven years and demonstrates the application of net operating loss deductions in the proper sequence. *[The year 1984 was the first year in which a net operating loss was incurred and any unused portion of that carryover is carried forward until 1991 after which any unused carryover would expire because it had gone the full term of seven years.]*

Amounts From Returns									
Return Year	1984	1985	1986	1987	1988	1989	1990	1991	1992
Fiscal Year Ended	31-Dec-84	31-Dec-85	31-Dec-86	31-Dec-87	31-Dec-88	31-Dec-89	31-Dec-90	31-Dec-91	31-Dec-92
Line 28	($100,000)	(6,000)	(8,000)	(10,000)	50,000	8,000	(5,000)	2,000	10,000
NJ Adjustments	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000
ENI before NOL ded. or exclusions	(95,000)	(1,000)	(3,000)	(5,000)	55,000	13,000	0	7,000	15,000
NOL Deduction	NA	0	0	0	55,000	13,000	0	7,000	9,000
ENI before exclusions	0	0	0	0	0	0	0	0	6,000
Dividend exclusion & IBF exclusion	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000
Entire Net Income	0	0	0	0	0	0	0	0	4,000
NOL Carryovers Applied									
1985	0								
1986	0	0							
1987	0	0	0						
1988	55,000	0	0	0					
1989	13,000	0	0	0	0				
1990	0	0	0	0	0	0			
1991	7,000	0	0	0	0	0	0		
1992		1,000	3,000	5,000	0	0	0	0	0
1993			0	0	0	0	0	0	0
1994				0	0	0	0	0	0
1995					0	0	0	0	0
1996						0	0	0	0
1997							0	0	0
1998								0	0
1999									0
Unused	20,000	0	0	0	0	0	0	0	0
Total	95,000	1,000	3,000	5,000	0	0	0	0	0

***(d) The following explain and/or define the above table: Line 28 is the amount of the taxpayer's taxable income, before net operating loss deduction and special deductions which the taxpayer is required to report to the United States Treasury Department for the purpose of computing its Federal income tax. NJ Adjustments are the statutory additions and deductions to line 28 that are peculiar to the New Jersey corporation business tax. "ENI" means entire net income as defined in the Act and in these rules.**

"NOL" means net operating loss.*

Exclusions are the exclusions from entire net income for dividends received and the eligible net income of an international banking facility.

"IBF" means the eligible net income of an international banking facility.*

18:7-5.14 Limitations to ***the*** right of ***a*** net operating loss carryover

(a) The net operating loss carryover automatically becomes zero when the cumulative effect of all its capital stock redemptions and sales after June 30, 1984 is a 50 percentage point change in the ownership of its voting stock and the corporation changes ***from*** the business giving rise to the loss. For this purpose the exchange of stock is a sale. ***Further, solely for this purpose and no other purpose in the Act, a business is defined in terms of the economic factors of production.*** The sequence in change of ownership and change in the business and the taxability of an exchange for Federal income tax purposes are irrelevant. The economic substance of the transaction is, however, paramount and may indicate forfeiture of a net operating loss carryover *[without respect to the bright line test]*.

***(b) The Director may disallow the carryover in those instances where the facts support the premise that a corporation was acquired for the primary purpose of the use of its net operating loss carryovers. In this context, to prevent the trafficking in loss corporations, the Director will consider the following facts:**

1. Whether the physical location or other fixed assets of the loss corporation were used in a new business;

2. The extent of the termination of the existing work force of the loss corporation;

3. A price paid for the loss corporation in excess of the market value of the assets; and

4. Any other material deemed appropriate to the determination.

(c) No single factor shall be deemed on its own to be dispositive of the issue.*

Example 1: B Corporation *[is]* ***was*** wholly owned by a single stockholder. It operated a notably unsuccessful restaurant and built up significant net operating loss carryovers. The stockholder *[transfers]* ***transferred*** 49 percent of his stock to an investor who has access to a recognized and uniformly profitable fast food franchise. B Corporation releases substantially all its existing employees, disposes of its equipment and undertakes the fast food franchise business at a new location. Notwithstanding that B Corporation's sole stockholder sold less than 50 percent of his stock and the corporation still sells food in a heated state, the net operating loss carryovers to B Corporation become*[s]* zero. ***The disposition of land, labor and capital until nothing remains except an empty corporate shell whose principal attributes are the apparent existence of an unused net operating loss carryover and some liquid capital in quest of an entirely new business is deemed to support the premise that the corporation was acquired for the primary purpose of the use of its net operating loss carryover.*** The economic substance of the transaction *[is]* ***would have been*** to transfer the loss carryovers to a new business ***which is precluded by the rule*.**

Example 2: C Corporation was a manufacturer of buggy whips and button hooks. Due to a declining demand for its products it has built up significant net operating loss carryovers. C Corporation has only one stockholder who sells 50 percent of his capital stock to a woman who has invented a cheap and well-styles perpetual motion machine for which there is a clamorous demand. C Corporation changes its name to D Corporation, retools and hires additional employees. It expands its plant, closes out its old product lines and realizes huge profits in its rejuvenation. D Corporation's net operating loss carryovers from its buggy whip days are unaffected by any of the above circumstances and may be claimed as a net operating loss deduction. The economic substance of the transaction is a mere restructuring of its manufacturing product line. ***It did not change its business where it only reallocated its economic factors of production.***

18:7-5.15 Net operating loss

(a) A net operating loss is the excess of allowable deductions over gross income used in computing entire net income.

(b) Neither a net operating loss deduction nor any exclusions from entire net income are allowable deductions in computing a net operating loss.

(c) There is no net operating loss for any year that a Corporation Business Tax Return (CBT-100) is not filed *[that reports]* ***or if filed does not report*** entire net income as a *[positive or]* negative amount.

18:7-5.16 Effect of audit adjustments

An audit adjustment to entire net income shall serve to revise the amount of any net operating loss for the year of the change and the net operating loss carryover to which it relates.

OTHER AGENCIES

(a)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

District Zoning Regulations Commercial Park Zone Official Zoning Map

Adopted New Rules: N.J.A.C. 19:4-4.146 through 19:4-4.156
Adopted Amendment: N.J.A.C. 19:4-6.28

Proposed: October 21, 1985 at 17 N.J.R. 2530(a).
Adopted: January 8, 1986 by Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.
Filed: January 10, 1986 as R.1986 d.19, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:17-6(1).

Effective Date: February 3, 1986.

Expiration Date pursuant to Executive Order No. 66(1978): November 7, 1988 for N.J.A.C. 19:4-6; November 2, 1986 for N.J.A.C. 19:4-4.

Explanation of Changes to Proposal:

The original proposal included the rezonong of properties located in the Town of Secaucus, New Jersey, known and designated as Block 117, Lots 2 and 3, and Block 118, Lot 1. Based upon a letter of submittal on behalf of the property owner requesting that these parcels not be rezoned, the Hackensack Meadowlands Development Commission has deleted these properties and they shall remain as originally zoned.

Summary of Public Comments and Agency Responses:

The Commission received a letter from Bennett M. Stern, Esq., representing the owner of properties in the Town of Secaucus, New Jersey, known and designated as Block 117, Lots 2 and 3 and Block 118, Lot 1. Through his attorney, the property owner requested that his properties not be rezoned and that they remain as previously zoned. The H.M.D.C. staff evaluated this request and recommended to the Commission that this request be granted. The Commission adopted the proposal on December 18, 1985 with the deletion of these properties from the proposal.

The Commission received a letter of support from the Hon. Paul Amico, Mayor of the Town of Secaucus, which letter concurred with the Commission proposal.

No member of the public attending the hearing objected to the proposal, nor were any further written comments received.

Full text of the adoption follows (deletions shown in brackets with asterisks *[thus]*).

19:4-6.28 Official Zoning Map

The zoning designation of Block 219A, Lot 47C; Block 226, Lots 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16, 17 and 18 in the Town of Lyndhurst, New Jersey, are changed from Light Industrial (B) to Commercial Park.

The zoning designation of Block 100, Lots 1 and 2; Block 101, Lot 8; Block 110, Lot 1; Block 117, Lot 1 *[,2 and 3]*; Block 118, Lots *[1,]* 2, 3, 4 and 5 in the Town of Secaucus, New Jersey, are changed from Waterfront Recreation to Commercial Park.

19:4-4.146 Commercial Park Zone: Purposes

The Commercial Park Zone is designed to accommodate, on large lots, commercial mixed use developments, combined in such a way that these developments are aesthetically pleasing, and inter-related in such a way that there is a mitigating effect upon peak hour traffic which would normally be generated from single commercial uses of equivalent size.

19:4-4.147 Commercial Park Zone: Type of development

Developers of land located in the zone shall have the option of developing said land in accordance with the provisions of N.J.A.C. 19:4-4.133 to 19:4-4.139, or as a general planned unit development in accordance with the provisions of N.J.A.C. 19:4-4.144.

19:4-4.148 Commercial Park Zone: Permitted uses

(a) The following are permitted uses in the Commercial Park Zone:

1. Office buildings which must include a minimum of five percent of the total floor area (not including parking structures) to be utilized for restaurants, with accessory cocktail

lounges, banks, retail shops, and/or theaters, all of which shall be oriented toward use by those employees within the same lot of record.

2. Hotels, which:

i. As a principal use, with accessory retail shops and restaurant facilities, for the use and convenience of hotel patrons primarily.

ii. As an accessory use and structure to office buildings as described in (a)1 above, with a maximum of 20 hotel rooms per acre. Accessory hotel facilities shall not be included in the overall Floor Area Ratio.

3. Restaurants, not including fast food, or drive-in facilities.

19:4-4.149 Commercial Park Zone: Special exceptions

(a) The following are special exceptions in the Commercial Park Zone:

1. Banks, as a principal use;
2. Helistops
3. Hospitals.

19:4-4.150 Commercial Park Zone: Use limitations

(a) The following are use limitations in the Commercial Park Zone:

1. No outdoor storage;
2. No retail sales, motor freight facilities, or trucking operations, except as incidental and accessory to a permitted or special permit use;
3. No slaughtering of animals.

19:4-4.151 Commercial Park Zone: Lot area requirements

The minimum lot area in the Commercial Park Zone is three acres.

19:4-4.152 Commercial Park Zone: Bulk regulations

(a) The following are bulk regulations in the Commercial Park Zone:

1. Maximum lot coverage: 50 percent
2. FAR 1.25 (not including parking garages);
3. Minimum lot width: 200 feet;
4. Yards:

i. Minimum front: 65 feet;

ii. Minimum side: 30 feet;

iii. Minimum rear: 30 feet;

5. Minimum final finished floor elevation: 10 feet mean sea level based on United States Coast and Geodetic Datum.

19:4-4.153 Commercial Park Zone: Buffer requirements

Where any development borders the Hackensack River or any of its tributaries, there shall be a 50-foot wide strip of wetland necessary to insure proper drainage and edge effect at such border.

19:4-4.154 Commercial Park Zone: Environmental performance standards

(a) All uses in the light industrial and distribution zone-A shall comply with the environmental performance categories of N.J.A.C. 19:4-6.1 through 19:4-6.16 as follows:

1. All category-B environmental standards shall apply;
2. All water quality standards shall apply.

19:4-4.155 Commercial Park Zone: Design of structures and other improvements

The design of all structures and other improvements shall comply with the requirements sign standards of N.J.A.C. 19:4-6.18.

19:4-4.156 Commercial Park Zone: Waterfront development

(a) All permitted uses and special exceptions listed herein shall include a marina meeting the minimum requirements for marinas of N.J.A.C. 19:4-4.35(a) 1 and 2, wherever the development borders upon the Hackensack River or its tributaries.

(b) Wherever the development borders upon the Hackensack River or any of its tributaries, that development shall be designed so as to permit public access to the edge of the river.

OFFICE OF ADMINISTRATIVE LAW NOTE: A map showing the change in zoning designation was submitted as part of the Commission's notice of proposed rule.

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Public Financing
General Elections for the Office of Governor

Readoption: N.J.A.C. 19:25-15

Proposed: December 2, 1985 at 17 N.J.R. 2868(b).
Adopted: January 9, 1986 by Election Law Enforcement Commission, Frederick M. Herrmann, Executive Director.
Filed: January 9, 1986 as R.1986 d.17, **without change.**

Authority: N.J.S.A. 19:44A-38.

Expiration Date pursuant to Executive Order No. 66(1978): January 9, 1991.

Summary of Public Comments and Agency Response: **No comments received.**

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 19:25-15.

(a)

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Schedule of Charges
Kennedy International Airport
Newark International Airport
LaGuardia Airport
Journal Square Transportation Center

Adopted: December 17, 1985 by The Port Authority of New York and New Jersey, Doris E. Landre, Secretary.

Filed: January 10, 1986 as R.1986 d.20, (**Exempt,** from **Administrative Procedure Act** as "Exempt Agency", see N.J.S.A. 52:14B-2(a)).

Effective Date: Kennedy International, Newark International and LaGuardia Airports, January 1, 1986. Journal Square Transportation Center, January 7, 1986.

Full text of the adoption follows.

Kennedy International, Newark International and LaGuardia Airports—Revision to Schedule of Charges—Public Aircraft Parking and Storage Area Charges

RESOLVED, that the Schedule of Charges for the use of the Public Aircraft Parking and Storage Areas at Kennedy International, Newark International and LaGuardia Airports be, and the same is hereby amended, effective January 1, 1986, as follows:

	For First Eight Hours or Fraction Thereof	For Each Additional Eight Hours or Fraction Thereof
For each aircraft not exceeding 50,000 pounds maximum gross weight for take-off	$15.00	$15.00
50,001-75,000 lbs.	16.00	15.00
75,001-100,000 lbs.	18.00	15.00
100,001-125,000 lbs.	23.00	20.00
125,001-150,000 lbs.	26.00	23.00
150,001-175,000 lbs.	30.00	27.00
175,001-200,000 lbs.	33.00	30.00
200,001-225,000 lbs.	40.00	38.00
225,001-250,000 lbs.	48.00	45.00
For each additional 25,000 lbs. or fraction thereof over 250,000 lbs. an additional charge of	8.00	8.00

and it is further

RESOLVED, that the Executive Director be and he hereby is authorized to revise any and all of the foregoing from time to time when such revisions are necessary to recover capital and operating costs.

Journal Square Transportation Center—Public Vehicle Parking—Revision to Schedule of Charges

RESOLVED, that a revision, effective January 7, 1986 , to the Schedule of Charges for public parking at the Journal Square Transportation Center to reflect the rates indicated in the attached schedule is authorized; and it is further

RESOLVED, that the President is authorized, effective January 7, 1986, to revise the Schedule of Charges from time to time as he deems appropriate to maintain competitive rates and as conditions warrant.

JOURNAL SQUARE TRANSPORTATION CENTER
PARKING GARAGE
SCHEDULE OF CHARGES (a)

For Patrons Entering on
Monday to Friday between
6 AM and 6 PM, excluding Holidays(b)

	Present	Proposed
Up to 1 hour	$1.25	$1.50
Up to 2 hours	1.75	2.00
Up to 4 hours	2.50	3.00
Up to 6 hours	3.00	3.50
Up to 7 hours	3.25	4.00
Up to 10 hours	4.00	5.00
Up to 12 hours	4.25	5.25
Up to 16 hours	5.00	6.50
Up to 24 hours (Daily Maximum)(c)	5.75	7.25

JOURNAL SQUARE TRANSPORTATION CENTER
PARKING GARAGE
SCHEDULE OF CHARGES(a)

For Patrons Entering Anytime Weekends
and Holidays, or on Weekdays between
6 PM and 6 AM

	Present	Proposed
Up to 1 hour	$ .75	$1.00
Up to 2 hours	1.25	1.50
Up to 4 hours	2.00	2.25
Up to 12 hours	2.75	3.00
Up to 24 hours (Daily Maximum)(c)	3.50	4.00

(a) Rates include City of Jersey City 15% tax

(b) New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day

(c) Over 24 hours (anytime of day or week)—$.75 each hour or part up to daily maximum. Minimum charge if ticket is lost will equal $7.25 under proposed rate schedule.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Coastal Resources and Development

Adopted Amendments: N.J.A.C. 7:7E

Proposed: June 17, 1985 at 1466(a), 1797(b) and 1797(c).
Adopted: December 26, 1985 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: December 27, 1985 as R.1985 d.715, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:19-1 et seq.; 13:9A-1 et seq., and 12:5-3.

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): July 24, 1990.
DEP Docket No. 029-85-05.

AGENCY NOTE: On July 15, 1985 a Notice of Correction to the New Jersey Administrative Code at N.J.A.C. 7:7E and to Proposed Amendments to N.J.A.C. 7:7E was published in the New Jersey Register at 17 N.J.R. 1797(c). Due to printing errors, amendments to the Coastal Resource and Development Policies (at N.J.A.C. 7:7E-3.10, 3.30, 3.33, 3.37, 4.10, 5.5, 8.7 and 8.17) adopted on April 19, 1982 at 14 N.J.R. 385(c), were not completely included in the New Jersey Administrative Code published by the Office of Administrative Law.

Also several typographical errors appeared in the amendments to N.J.A.C. 7:7E proposed by the Department of Environmental Protection (hereinafter, "Department") on June 17, 1985 at 17 N.J.R. 1466(a). Where applicable, this adoption will refer to the corrected text of the existing rule and proposal as set forth in the Notice of Correction.

Summary of Public Comments and Agency Responses:

The Department held public hearings concerning the proposed amendments in Cape May Court House and Atlantic City on July 15, 1985, in Asbury Park on July 16, 1985, in Jersey City on July 17, 1985 and in Trenton on July 18, 1985. The comment period for this proposal ended on August 15, 1985. Oral comments were received from most of the approximately 100 people who attended public hearings. These comments, as well as the approximately 200 written comments received, came from Natural Resources Defense Council; American Littoral Society; Department of the Public Advocate; The Port Authority of New York and New Jersey; New Jersey Marine Trades Association; Public Service Electric and Gas; Atlantic Electric; Division of Fish, Game and Wildlife; The Linpro Company; Pinelands Commission; United States Fish and Wildlife Service; Division of Water Resources, New Jersey Conservation Foundation; Jersey Central Power and Light Company; Maritime Advisory Council; Monmouth County Planning Board; Monmouth County Environmental Council; The Morie Company, Inc., New Jersey Builders Association; Office of the Attorney General; Allan Mallach; League of Women Voters; Department of Transportation; Department of Community Affairs; Department of Energy; Senator Frank Pallone; The City of Asbury Park; Carabetto/Vaccaro Developers; John Best; Scientific Inc.; ARCORP Properties.

In general, the Department's proposals concerning Mitigation (Subchapter 1), Filled Water's Edge (Subchapter 3), Dredging (Subchapter 4), Affordable Housing (Subchapter 7), Floating Homes (Subchapter 7), and Flood Hazard Areas (Subchapter 8) received the most attention. However, comments in one form or another spanned the range of issues addressed in the rules. In many cases, the comment was a statement of support for a proposed amendment. This Notice of Adoption will focus on those comments which either objected to a proposal or recommended some change in the language of the proposal.

Also, pursuant to Federal regulations (15 CFR 923.84) the Department is taking rulemaking action as described in Notice of Adoption. The Department considers this action to constitute "Routine Program Implementation" of the New Jersey Coastal Management Program. This term is defined in 15 CFR 923.84 as a program change which does not involve:

> "substantial changes in . . . or to enforceable policies related to: (1) boundaries; (2) uses subject to the management program; (3) criteria or procedures for designating or managing areas of particular concern or areas for preservation or restoration; and (4) consideration of the national interest involved in the planning for and in the siting of, facilities which are necessary to meet requirements which are other than local in nature."

The Division has requested the concurrence of the Office of Coastal Zone Management within the National Oceanic and Atmospheric Administration, with its determination that this rulemaking action constitute routine program implementation. Comments concerning whether or not this rulemaking action should be considered routine program implementation should be sent, on or before March 6, 1986 to:

Kathryn Cousins
North Atlantic Regional Manager
Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
3300 Whitehaven Road
Washington, D.C. 20235

For the **full text** or further information about the above described rulemaking actions, write or call:

Robert Tudor
Planning Coordinator
Division of Coastal Resources
CN 401
Trenton, New Jersey 08625
(609) 292-9762

The Notice of Adoption is structured to correspond to subchapters commented upon and all rule citations refer to the adopted N.J.A.C. citations.

SUBCHAPTER 1. INTRODUCTION

7:7E-1.5(c) Definitions

1. COMMENT: The proposed definition of "prohibited" provides the Department with excessive discretion in permitting uses that are "prohibited" by the Department's Coastal Policies but are in accordance with some other State environmental program. This proposal should be deleted.

RESPONSE: The Division concurs that a blanket change of the definition of the term "prohibited" is inappropriate and this change has been deleted. In the instance of conflict between two New Jersey State environmental programs, the Department will refer to the relevant statutes upon which the programs are based for resolution.

2. COMMENT: The proposal to expand the definition of "discouraged" to require a net gain in quantity as well as quality of the coastal resource of concern in special cases goes beyond the expressed "no net loss" policy for mitigation and should be deleted.

RESPONSE: Implementation of the provision would be limited to cases where the Department considers the proposed use to be in the public interest despite its discouraged status. At the same time, the most significant of the eight Basic Coastal Policies directs the Division to protect and enhance the coastal system. The adopted definition is consistent with both objectives.

3. COMMENT: The examples of water dependent use are in some cases too vague and not in the best interest of the boating public. For example, boats up to 24 foot are generally accepted and defined as trailerable. Also, provision should be made for dry stacking operations because they have the unique ability to provide access to several boats in the same square footage which would be taken by one boat under the proposed amendment.

RESPONSE: The examples listed under this definition have been amended to address these concerns.

4. COMMENT: The reference to industries (other than fish processing plants) which receive and quickly process raw materials by ship within the category of water dependent uses is too vague and should be deleted.

RESPONSE: Such a description needs to be broad so that it is sufficiently inclusive. An industry that requires a waterfront location to quickly process raw materials by ship is a general example of a water dependent use.

5. COMMENT: Energy facilities and their appurtenant structures should be included among the examples of water dependent uses.

RESPONSE: The Division recognizes that, as a general matter, it is advantageous for electric generating stations to locate as close to a coastal water body as possible for cooling water purposes and the transport of fossil fuels and the removal of wastes. However, information concerning recent siting actions by the siting advisory councils of two New Jersey utilities indicates that water dependency is not absolutely critical. For example, the Atlantic Electric Company Cumberland I plant was sited in Millville with rail access for transporting coal and a freshwater lake for cooling purposes. Also, in the case of the Jersey Central Power and Light Forked River Coal Plant, previous investment in the site and proximity to loading centers were the principal factors in site selection.

6. COMMENT: Hotels and motels are not dependent on water access and should not be classified as water-oriented.

RESPONSE: Hotels and motels are not water dependent and are, therefore, specifically excluded from the definition of "water dependent use." However, these uses do serve the general public and provide a viable mechanism for the people of New Jersey to access and enjoy the waterfront. They are considered water-oriented if they are designed to take full advantage of a water's edge location.

7. COMMENT: The definition of water-oriented should be restricted by adding the following wording at the end of the sentence: "as long as it does not cause the degradation of water quality or other coastal resources on or off-site."

RESPONSE: The concerns addressed in the suggested language are routinely assessed, whether the development is water-oriented or not. There is no need to broaden the definition of this term by referencing concerns addressed generically elsewhere in the rules.

8. COMMENT: The exemption of industrial uses under the definition of water oriented should be deleted so that it is clear that all water-oriented uses must serve the general public.

RESPONSE: The Division disagrees. Industrial uses which derive economic benefit from direct access to a water body should be considered water-oriented. The goal of the Filled Water's Edge policy, the Special Urban Areas policy and pertinent Use Policies is to spur the construction of significant water dependent facilities, including walkways, fishing piers, marinas and possible support facilities for maritime commerce, while at the same time accommodating water-oriented industrial uses and non-water dependent residential and commercial development. The latter is necessary to effect economic development within historically depressed urban waterfront communities and to create new opportunities of contact with what has been a largely unused and uncared for waterfront.

7:7E-1.6 Mitigation

9. COMMENT: The amount of replacement, or mitigation area, should be on a 1:1 ratio, unless the Division can provide evidence that an area greater than this would be necessary to maintain the environmental productivity of the wetlands. The 2:1 replacement requirement is positive and does not reflect consideration of environmental value. The use of a 2:1 default value is arbitrary as the basis for its use is unknown.

RESPONSE: A Division sponsored study entitled "Evaluation of Artificial Salt Marshes in New Jersey" by Joseph K. Shisler and David J. Charette concluded that many Department authorized wetland mitigation projects were less than successful. The Division has addressed the incremental loss of this resource over time in a two fold manner: by increasing the mitigation requirement from 1:1 to 2:1 and by formulating a mitigation handbook available from the Division for use by developers, Division staff and interested parties. The policy is flexible in that it incorporates a provision which allows an applicant to mitigate at a ratio down to 1:1, provided he or she can demonstrate there will be no net loss in the environmental value of wetlands.

10. COMMENT: The provision for a waiver from the 2:1 replacement requirement should be eliminated in the absence of specific criteria to evaluate "environmental value."

RESPONSE: A mitigation handbook defining assessment and siting criteria is currently in preparation by Division staff. Also, the waiver provision is coupled with a monitoring requirement and a Division option to require additional mitigation. This is considered sufficient to ensure no net loss of aquatic habitat productivity.

11. COMMENT: "Environmental value" should be specifically defined and should not be left to subjective interpretations.

RESPONSE: Environmental value relates directly to biological productivity (standing crop, species diversity, function in the ecosystem etc.) which is the object of the monitoring requirement. As indicated in the response to the previous comment, a handbook defining monitoring requirements is in preparation and will be the basis for consistent implementation of this policy.

12. COMMENT: The Division's mitigation policy should strive for flexibility and recognize that the New Jersey coastal wetlands have already been massively disturbed. Provision for consideration of quantifiable improvement in the value of the ecosystem should be included.

RESPONSE: Consideration of species value to the ecosystem, e.g. *Spartina* vs. *Phragmites,* will be incorporated in the mitigation plan development process but will not be considered as the basis for a less than 1:1 replacement surface area. The goal of the policy is to protect and enhance the coastal ecosystem. To this end, the language at N.J.A.C. 7:7E-1.6(b) has been modified from the proposal so that filling or destruction of wetlands and all other environmentally sensitive resources is restricted, not just wetlands and intertidal and subtidal shallows.

13. COMMENT: The Division should modify the language concerning monitoring when wetlands mitigation is less than 2:1 to require the imposition of additional mitigation. The proposed language would have allowed the Division only to "retain the right to request additional mitigation." ALS)

RESPONSE: Each case involving wetlands mitigation at a rate less than 2 to 1 will be assessed on an individual basis and, where necessary, additional mitigation will be required. The language of the rule as adopted, provides for the imposition of this requirement and is sufficiently flexible so that the mitigation will fit the need. The language has been changed from the proposal so that the Department retains the right to "require" (rather than request) additional mitigation, where necessary.

14. COMMENT: Strict standards on wetlands mitigation should be incorporated into the rule.

RESPONSE: A wetlands mitigation book is currently in preparation by Division staff and will be the basis for design of future mitigation projects. This approach will provide guidance for consistent decision-making yet be flexible enough to address specific siting concerns on a case-by-case basis.

15. COMMENT: The Division should consider the relative impact of a project before requiring any mitigation. In the case of powerline and cable installation the impact is minimal and often only temporary in nature.

RESPONSE: Mitigation in this context means restoration of the disturbed area, not creation of replacement wetlands. This may or may not require an active planting program depending upon the resiliency of the wetland system. This restoration requirement has been employed by the Division for years to ensure no net loss of the resource. This is consistent with the Basic Coastal Policy to protect and enhance the coastal ecosystem.

16. COMMENT: Proposals that would impact a significant amount of wetlands or water area should undergo a Habitat Evaluation Procedure assessment process as adopted by the U.S. Fish and Wildlife Service prior to acceptance of a mitigation plan.

RESPONSE: Based on staff experience in implementing the wetlands policy, under which development acceptability is extremely limited, only linear infrastructure projects are of a sufficient magnitude to warrant this formal assessment. In these cases, the Department does in fact require a detailed functional assessment of wetland values.

17. COMMENT: The proposal to apply a 2:1 ratio for wetlands replacement to all permitted projects does not recognize the Department of Transporation's (DOT) expertise and past experience in this field. This experience, plus a commitment to conduct a follow-up evaluation with knowledgeable staff personnel, should be sufficient for DEP to provide a direct DOT exemption from the 2:1 replacement requirement.

RESPONSE: The Coastal Resource and Development Policies recognize linear infrastructure as a special case and these facilities are, therefore, subjected to less stringent criteria concerning their location. However, for those resources harmed or destroyed by such development, mitigation is as entirely appropriate as it is for other projects. The policy provides for mitigating on a 1:1 basis providing no loss in environmental value of the resource of concern can be demonstrated by DOT or any other applicant.

18. COMMENT: For those wetlands deemed "less critical" or "non-critical" the Department of Transportation requests exception to the mitigation requirements.

RESPONSE: The policy is structured to recognize environmental value rather than an arbitrary classification scheme. Any provision to compensate resource loss on less than a 1:1 ratio would be inconsistent with the Basic Coastal Policy to protect and enhance the coastal ecosystem.

SUBCHAPTER 2. LOCATION POLICIES

No changes were proposed.

SUBCHAPTER 3. SPECIAL AREAS

7:7E-3.2 Shellfish beds

19. COMMENT: The reference to national interest in this section is unnecessary and exceedingly vague and should be deleted.

RESPONSE: This language change simply consolidates N.J.A.C. 7:7E-3.2(b)1i and ii under the existing policies and does not represent a substantive change. The national interest provision of this policy dates back to federal adoption of the New Jersey Coastal Management Program in September 1980 and is responsive to federal requirements in 15 CFR 923 providing for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements.

20. COMMENT: The Department should consider adding the following: "If the development is of national interest, and will result in the destruction of presently productive shellfish beds, the applicant shall be responsible for the expense incurred to salvage the resource. All such programs shall be coordinated with the appropriate shellfish management agency."

RESPONSE: The Division agrees that this approach to mitigation of the loss of the resource is reasonable and the suggested language has been included in its entirety at 7:7E-3.2(b)2.

21. COMMENT: State-managed shellfish recovery programs should be required rather than "encouraged" prior to dredging.

RESPONSE: Destruction of shellfish beds is generally prohibited and, in the rare instance of conflict with national interest, a shellfish recovery will be required as indicated in the previous comment.

22. COMMENT: The Department should consider adding the following to the shellfish resource survey requirement: "The applicant shall coordinate any shellfish resource inventory with the Bureau of Shellfisheries to ensure it is conducted in the appropriate manner, utilizing the best available techniques."

RESPONSE: The Division agrees that survey methodologies should be coordinated in a consistent manner and the suggested language has been included in its entirety at 7:7E-3.2(e).

7:7E-3.4 Prime fishing areas

23. COMMENT: Prime fishing areas should incorporate the identified fishing grounds provided in the Division of Fish, Game and Wildlife's commercial and recreational fishery mapping project.

RESPONSE: Although N.J.A.C. 7:7E-3.4(a) was not proposed to be changed, the Department has modified its language to incorporate the update source reference. No substantive change has been made.

7:7E-3.5 Finfish migratory pathways

24. COMMENT: The policy and rationale should agree with the objective of the Division of Fish, Game and Wildlife's anadromous fish restoration project.

RESPONSE: The policy has been amended to augment the Division of Fish, Game and Wildlife's efforts to enhance anadromous fish spawning areas.

7:7E-3.10 Marina moorings

25. COMMENT: The provision to allow water dependent development in a marina mooring area only when there is no loss of boat slips or decrease in the water area provided for mooring may limit a marina owner's discretion to locate a boat ramp, boat lift, a fuel dock or waste pump out facilities at the water's edge.

RESPONSE: The Division acknowledges these limitations, which were not intended. This aspect of the policy has been deleted in favor of the long standing provision to discourage "any use that would detract from existing or proposed recreational boating use in marina mooring areas."

7:7E-3.11 Ports

26. COMMENT: Boat ramps for recreational boating should not be discouraged on the Hudson River because this region is being transformed from industrial shipping to residential-commercial.

RESPONSE: The Division agrees in principle but finds that the definition provides ample guidance in defining where this use is inappropriate.

7:7E-3.14 Estuarine or marine sanctuary

27. COMMENT: Although there are presently no estuarine or marine sanctuaries in New Jersey, no practical gain would result from deleting the policy and it should remain unchanged.

RESPONSE: The Division disagrees. The policy is being deleted because it is not presently applicable in the coastal zone of New Jersey and may therefore cause confusion. Eliminating the policy in no way interferes with any future effort to establish a sanctuary.

7:7E-3.15 Intertidal and subtidal shallows

28. COMMENT: The proposal to expand the definition to include all submerged areas to a depth of four feet below mean low water will severely impede dredging activities and other water dependent uses.

RESPONSE: The Department acknowledges that water dependent activities which meet the acceptability conditions for the applicable water body type, should not be subject to a blanket mitigation requirement and the adopted policy has been revised to reflect this concern. (See 7:7E-1.6)

29. COMMENT: The phrase "generally discouraged" is ambiguous and dilutes the force and effect of this provision. The term generally should be deleted.

RESPONSE: The term "generally" properly indicates that some limited activities are conditionally acceptable in this special area. These are defined under the appropriate water use policies.

7:7E-3.16 Filled water's edge

30. GENERAL COMMENT: The majority of commenters supported or at least did not object to the concept of reserving a portion of the remaining filled sites along the water for water dependent uses. The scope of the policy and allocation of use, however, was the subject of a diversity of opinion. Comments ranged from opposition to the requirement for a water dependent area equal in size to the area within 100 feet of navigable water, to recommendations that the area of the requirement be expanded to require even greater percentage of the specific water dependent area along the navigable water's edge.

RESPONSE: The rationale for preserving water's edge space is addressed in detail in the Division's issue paper titled "Filled Water's Edge Policy Assessment" dated June, 1983. This document is available from the Department.

The 100 foot setback represents a balance in competing uses to ensure that future water's edge space will be available for water dependent uses, while generally allowing the majority of any given site to be developed in water-oriented or non-water dependent uses. The 100 foot requirement is also consistent with the long standing water dependency language for development acceptability in the National Water's Edge—Floodplains.

31. COMMENT: The waterfront portion of a Filled Water's Edge should have at least 50 percent of its perimeter along the navigable water's edge. The Division also received several comments which indicated that the perimeter concept for calculating the dimensions of a rectangular waterfront parcel was difficult to understnad and translate into a real water dependent zone on a site plan.

RESPONSE: The Division acknowledges the confusion in delineating an acceptable "waterfront portion" under the proposed policy and has simplified the procedure to delete reference to the perimeter of the water dependent area. The adopted policy requires that water dependent activities occupy no less than 30 percent of the navigable water's edge. This ensures that a significant portion of the area along the water is devoted to water dependent uses and does not preclude a requirement for a greater area along the water where warranted for a specific site and use.

32. COMMENT: The requirement that the developer prove that water dependent and water-oriented uses are impractical prior to developing the "non-waterfront" portion of the site in a non-water dependent use is an unreasonable hardship on the applicant, and will also provide the Division with a very subjective and difficult decision to make.

RESPONSE: The Division has reviewed the language of N.J.A.C. 7:7E-3.16 and has modified 7:7E-3.16(c)2 so that non-water dependent uses on the non-waterfront portion of the site are allowed without the applicant's having to prove need. The modification provides that the Division may require that a portion of the area be devoted to water dependent or

oriented uses in those cases in which a special need has been identified. Additionally, after review N.J.A.C. 7:7E-3.16(f) has been modified to address the special needs of the northern waterfront areas and Delaware River regions. These areas are more densely populated and development must be more carefully planned in order to more adequately assure that the proposed uses are not discordant with a comprehensive scheme of waterfront development. The changes provide additional criteria to better assess the site's potential or each of potential for water dependent use. The modified subsection also provides that in these areas, a water dependent use will be expected unless shown to be infeasible.

33. COMMENT: The waterfront portion of a development should be reserved for water related uses to the maximum extent practicable, regardless of the size of the development. The exception to the 100 foot setback for filled water's edge sites of 10 acres or more should be deleted.

RESPONSE: Large sites may be able to accommodate existing and future water dependent uses in conjunction with other land uses and this language allows discretion on the part of the Division in making this assessment.

34. COMMENT: Substantial reductions in shore-based recreational fishing opportunities have been observed along New Jersey's ubran waterfront region along the Hudson River. Shore-based access to the fishery resource should be provided for the general public as expeditiously as possible.

RESPONSE: In addition to the statewide reference to public access requirements under this policy, specific consideration of fishing access needs have been incorporated into the northern waterfront component of the policy. Provision for fishing access is also addressed under the Special Urban Areas Policy (7:7E-3.41) and the Housing Use Policy (7:7E-7.2).

35. COMMENT: All projects on Filled Water's Edge sites of 10 acres or more and with specified amount of water frontage should be required to provide visual access to a specified percentage of its waterfront from the first public road, unless the depth and existing topography of the site already prevent access.

RESPONSE: The proposal requires the developers of all Filled Water's Edge sites, regardless of size, comply with the Public Access Resource Policy (7:7E-8.11). This policy, and the Division guidelines to implement the policy, specifically address visual access requirements. Together they provide sufficient guidance for determining the amount of waterfront to be viewed from the road.

7:7E-3.18 Natural water's edge floodplains

36. The language of N.J.A.C. 7:7E-3.18 has been modified to be more consistent with the provisions of N.J.A.C. 7:7E-3.16, Filled water's edge. Specific recreational uses are acceptable provided that they do not reduce the flood dissipating value of the flood plain or preclude water dependent use of the area within 100 feet of navigable water.

7:7E-3.21 Dunes

37. COMMENT: The definition of "dune" should include man-made sand dunes rather than man-made dikes.

RESPONSE: The Division agrees that the term dikes could be interpreted to mean revetments and other shore stabilization structures not consistent with the intent of this policy. The adopted definition has been modified to address this concern.

7:7E-3.22 Overwash fans

38. COMMENT: Criteria should be developed for determining whether a newly created or expanded dune would in fact diminish the possibility of future overwash.

RESPONSE: It is implicit in the adopted language that the Division, in evaluating a mitigation proposal, would investigate the nature and degree of historical overwash for a site and conduct a risk assessment as part of the decision-making process.

7:7E-3.23 Erosion hazard areas

39. COMMENT: Development in erosion hazard areas is short-sighted, dangerous, and costly to the taxpayer. It should be prohibited.

RESPONSE: The Division concurs and the adopted rule addresses this concern without the need for change from the proposal.

7:7E-3.24 Island corridor

40. COMMENT: New or expanded development should be prohibited within the oceanfront barrier island corridor.

RESPONSE: A blanket prohibition upon future development on oceanfront barrier islands would represent a significant departure from the Department's proposal to set upper limits on development intensity, as is done for the Land Areas of the coastal zone. Any change of this magnitude would, at a minimum, require a separate rulemaking procedure. The adopted policy requires that new or expanded development not only meet the requirements for High Development Potential to be developable, but also limit the area to be developed to a maximum of 80 percent cover in structures and impervious paving. This represents a strengthening of the policy and is consistent with overall coastal management goals of providing open space and managing stormwater on-site.

41. COMMENT: On bay island corridors, water dependent development only should be permitted, and then only if there are no feasible alternative and environmental impacts are minimized.

RESPONSE: The proposed policy authorizes non-water dependent development on the upland portion of bay islands only when the site abuts a paved public road and is serviced by a sewerage system with adequate capacity and then at a maximum intensity of only three to five percent impervious cover. This level is low enough to protect coastal resources while recognizing the owner's right to a reasonable use of the property.

42. COMMENT: The provision allowing for water dependent development on bay island corridors which does not abut a paved public road and sewerage system with adequate capacity should be deleted.

RESPONSE: The Division has reviewed this provision and concurs that development in this sensitive area requires that the need for such support facilities as roads and utilities be addressed. Accordingly, development on bay island corridors which does not abut a paved public road or sewage system is discouraged. This language has been modified so that such a use is not acceptable even when there are no feasible alternatives. The language has also been clarified so that an acceptable project needs to be served by a sewage system, not abut it. It should be noted that this type of development is "discouraged" and not "prohibited." This means that, while the proposed use is likely to be rejected, it may be permitted where the Department considers the proposed use to be in the public interest and provided that certain mitigating or compensating measures are taken.

7:7E-3.25 Wetlands

43. COMMENT: The definition of wetlands should include reference to U.S. Fish and Wildlife Service National Wetlands Inventory Maps. The definition as stated is too broad since

the boundaries of such areas could conceivably change over time with varying rainfall conditions.

RESPONSE: The definition is consistent with that employed by the U.S. Army Corps of Engineers and has proven effective for several years in a diversity of habitats both at the State and federal level. Degree of saturation is determined by soil mottling not some ephemeral water condition and is augmented by the occurrence of hydrophytic vegetation. National Wetlands Inventory Maps are a useful tool for a first order determination of the presence or absence of wetlands but are not sufficient detail or accuracy for delineation of wetlands in the field.

This definition has been reformatted, without substantive change, to make it consistent with the statutory definition (N.J.S.A. 13:9A-1 et seq.)

44. COMMENT: The Department and the Tidelands Resource Council should not be exempted from the rules protecting wetlands.

RESPONSE: The source of the exemption language in the rule is directly from the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.). As a practical matter, however, both entities strive for protection of this resource.

45. COMMENT: In the determination of "minimum feasible alteration" or "minimum feasible disturbance," mitigation or compensation proposals of a developer should be considered in conjunction with the policy compliance assessment.

RESPONSE: The Division disagrees. Mitigation as a tool for maintaining or enhancing the coastal ecosystem must be limited to only those projects which can satisfy the stringent acceptability criteria for a given resource. A broader interpretation or application of the term "mitigation" would not be consistent with the Basic Coastal Policy to protect and enhance the coastal ecosystem.

46. COMMENT: The provision concerning "feasible alternatives" should be expanded to recognize the extent to which a property owner has owned property continuously since before regulations were adopted and to include provision for hardship variance.

RESPONSE: The administrative rules are a refinement of the three statutes that comprise the New Jersey Coastal Management Program. Neither the Coastal Area Facility Review Act, the Wetlands Act nor the Waterfront Development Law provide for consideration of economic hardship. Accordingly, it is not appropriate to include such a provision in the rules adopted pursuant to those Acts.

47. COMMENT: Regulations dealing with the disturbance of wetlands should be based on an analysis of all existing wetlands in the coastal zone instead of just the wetlands that are located on the property that is the subject of an individual permit application.

RESPONSE: The Division disagrees. One of the mandates of the New Jersey Coastal Management Program is to protect and enhance the coastal ecosystem. One of the principal mechanisms for doing this is to ensure that each development proposal that is subject to State regulation does not adversely impact the estuarine ecosystem. To accomplish this, it is necessary that each and every project meet applicable development standards and, if some disturbance is acceptable, to mitigate this disturbance.

7:7E-3.26 Wetlands buffers

48. COMMENT: Comments regarding this policy ranged from suggestions to delete the provision which allows for buffers of reduced width, to recommendations that the policy be amended to allow stormwater managment facilities in certain circumstances. All comments addressing this policy pointed to the need for criteria which define the circumstances under which development may take place within a wetlands buffer.

RESPONSE: The Division acknowledges the need for criteria based on a review and analysis of buffers provided in our coastal zone to date. Dr. Joseph Shisler of Cook College has been retained by the Division to conduct a study which is presently underway. Until this investigation is complete it would be premature to either strengthen or weaken the policy.

7:7E-3.28 Coastal bluffs

49. COMMENT: The definition should be revised to include the specific locations where coastal bluffs occur as is mentioned in the policy rationale. There is no need for the Coastal Bluffs policy to apply to those areas that are not referenced as such in the rationale.

RESPONSE: The Division disagrees. The present definition clearly specifies that "all steep slopes associated with shoreline processes, that is, adjacent to the shoreline or contributing sediment to the system, will be considered coastal bluffs." The areas specifically referenced in the rationale are for example only and are by no means all inclusive. Since there is no comprehensive inventory of this special area type and bluffs occur in one form or another along shorelines throughout the coastal zone (for example, Toms River and Maurice River), it would be inappropriate to limit the policy to select areas.

7:7E-3.31 Farmland conservation areas

50. COMMENT: The provision allowing for development of this resource if "it can be demonstrated by the applicant that new or continued use of the site for farming or farm-dependent purposes is not economically feasible" should be deleted.

RESPONSE: The proposed amendment would significantly expand the geographic scope of the policy from three coastal counties to the entire coastal area (CAFRA jurisdiction). The language providing for consideration of economic feasibility of farming uses for a given site reflects recognition by the Department that Class I, II, and III soils may in some cases be unproductive and/or too expensive to clear for this use. This position is supported by the State Agriculture Development Committee, representatives of which work closely with the Division in formulating the amended policy. In implementing this policy and, in particular, determining the economic feasibility of farming a specific site, the Division will rely heavily on comments by County Agriculture Development Boards.

7:7E-3.32 Steep slopes

51. COMMENT: The Division should allow for development of marginally steep slopes (that is, between 15 and 20 percent) provided that the development meets the conditions set forth in the policy. Development on slopes greater than 20 percent would continue to be "discouraged," while development on slopes between 15 and 20 percent would be "conditionally acceptable" and still be protected by the policy requirements.

RESPONSE: The present language does not preclude development of marginally steep slopes. It requires that such a use be essential to a reasonable use of the site and that the applicable development standards be met. These findings are consistent with the basic coastal management goals of protect-

ing and enhancing the coastal system and should remain to ensure that development is clustered on the least environmentally sensitive portions of a given site.

52. COMMENT: Procedure for measuring steep slopes should be standardized and should reflect the entire slope, not just small portions of a larger sloped area.

RESPONSE: The Division acknowledges that a standard procedure for measuring steep slopes would be instructive to both review staff and those interpreting the policy. This will be accomplished by Division's preparation of a short guidance document, not a rulemaking action. The Division disagrees that a slope should be considered steep only when the entire length of the slope, as measured from its toe to its head, exceeds 15 percent. For example, in the situation of an entire site occurring on a slope with the top third classified as steep, and the majority of the rest of the site falling in the zero to 10 percent range, it is conceivable that the entire slope would be less than 15 percent. It is entirely appropriate, in this case, to direct development to the lower portion of the site and avoid the potentially unstable steep area.

7:7E-3.36 Endangered and threatened wildlife or vegetation species habitat

53. COMMENT: The proposed language change from "Endangered or Threatened Wildlife or Vegetation Species Habitat" to "This special area" changes the intent of the policy requirement substantially. Since "Habitat" under the present policy reflects back on the definition, it restricts development concerns to those areas "known to be inhabited on a seasonal or permanent basis by "threatened or endangered species.

RESPONSE: The special area reference was made for grammatical reasons, not substantive ones. There is no intent to expand the scope of the policy beyond habitat as defined in the definition.

54. COMMENT: Comments concerning the inclusion of a consideration for potential secondary impacts as a mechanism for adversely impacting endangered and threatened species habitat ranged from "strong support" to an "insistence" that the language be deleted.

RESPONSE: The Division acknowledges that development in a region surrounding a CAFRA regulated facility is beyond the control of the developer of the facility. Accordingly, this proposal has been modified.

55. COMMENT: The Division should abandon its proposal to delete the policy provision which provides for on or off site mitigation in the form of preservation or enhanced management of existing habitat.

RESPONSE: Division implementation of this aspect of the policy since it was adopted in 1982 has not been successful. Problems resulted from the apparent incompatibility of certain species with relatively intense development. In addition, the principal purpose of recognizing the endangered or threatened status of a species is to preclude further encroachment on the remaining habitat. Piecemeal encroachment, whether compensated by management plans or not, still results in less and less habitat available to the species over time. Lastly, the Pinelands Commission has advised the Division that deletion of this provision makes the Rules on Coastal Resource and Development Policies more consistent with the Comprehensive Management Plan.

56. COMMENT: The policy rationale should list among the threatened and endangered plant references the Pinelands list contained in Section 6-204 of the Comprehensive Management Plan (N.J.A.C. 7:50-6.24).

RESPONSE: The rationale associated with the adopted policy incorporates this change and updates the list to include the references to the Comprehensive Management Plan.

Also, N.J.A.C. 7:7E-3.36(d) and (e) have been modified to refer to the fact that the State endangered species list was amended on May 6, 1985.

7:7E-3.39 Special hazard areas

57. COMMENT: The proposed amendment to this section would add the phrase "and areas where hazardous materials are used or disposed, including adjacent areas." The amendment should include specific reference to what materials are considered to be hazardous.

RESPONSE: The important point here is not what materials may be classified as hazardous on some State or federal list, but rather those materials that constitute a hazard to public health, safety and welfare in a given situation. This relates not only to the type of material but also to the level of the material in the environment. Accordingly, referencing a hazardous material list would not be meaningful. The Division in implementing this provision will coordinate with other State agencies to evaluate any potentially hazardous situation and assess risk.

7:7E-3.41 Special urban areas

58. COMMENT: The proposed amendment would delete the provision precluding unreasonable restriction of public access between the development and the water body. The Division should abandon this deletion to ensure that reconstructed piers provide public angler access to fishery resources.

RESPONSE: This provision has not been deleted; it has been replaced by an explicit compliance requirement with the Public Access Resource Policy (N.J.A.C. 7:7E-8.13). At the same time, the Public Access Policy has been amended to require that "Development adjacent to coastal waters shall provide fishing access within the provision of public access wherever feasible and warranted." This is sufficient to provide for public angler access to fishery resources.

59. COMMENT: The Division should further condition the pier replacement provision with a requirement to ensure that the reconfigured pier does not reduce interpier (quiet water) area.

RESPONSE: It is implicit in the proposed requirement that there be no adverse impact to fisheries resources and that such factors as the relative amount of quiet water will be addressed.

60. COMMENT: Both the existing and proposed policy concerning the acceptability of non-water dependent uses over existing or reconfigured piers is inconsistent with federal Guidelines for Review of Fish and Wildlife Aspects of Proposals in or Affecting Navigable Waters. Federal Register, December 1, 1975. The policy should be left as is or changed to reflect water dependent uses only.

RESPONSE: The policy as proposed represents a strengthening of the existing policy by requiring consideration of the feasibility of water dependent uses, potential impacts to fisheries resources and recognition of the need to remove existing structures which pose a hazard to navigation as part of the Harbor Cleanup Program. The Federal Guidelines provide for approval provided the project is in the public interest and no alternative site mutually acceptable to the Service and the applicant is available. The Department has determined that the proposal reflects a balanced consideration of each of the stated considerations and will actively coordinate with all pertinent federal agencies to ensure environmentally sensitive development of the subject shorelines.

61. COMMENT: Fishing access should be an explicit consideration for all development proposals in the Hudson River/Northern Waterfront Region.

RESPONSE: The language of both the Special Urban Area Policy (7:7E-3.41) and the Housing Use Policy (7:7E-7.2) has been amended to indicate that fishing access is a specific concern in this region. The amendments are consistent with the New Jersey Division of Fish, Game and Wildlife reports concerning "Urban Fishing on the Lower Hudson River, A Resource Inventory of Potential Fishing Pier Sites," dated February, 1985.

7:7E-3.42 Pinelands National Reserve and Pinelands Protection Area

62. COMMENT: The policy language should be updated to reflect the fact that the Pinelands Commission adopted a Comprehensive Management Plan in November 1980 and to reflect amendments to the New Jersey Surface Water Quality Standards (N.J.A.C. 7:9-4) adopted on April 29, 1985.

RESPONSE: The policy has been amended to reflect the current status of both documents. The section referring to the definition of "Pinelands National Reserve," although not proposed for amendment has been changed to reflect this current status. Because of the changes made to the management plan there no longer needs to be a reference to the municipalities included within the Pinelands Protection Area, the Central Pine Barrens Region as defined by N.J.A.C. 7:9-4.6(i) and (j), and the Coastal Zone.

7:7E-3.43 Hackensack Meadowlands District

63. COMMENT: The Hackensack Meadowlands are not receiving adequate protection. Although the proposed revision is aimed at providing the Division a more active role in monitoring action in this area, it does not go nearly far enough. The policy should be expanded to require: a comprehensive review of the HMDC plan by DCR resulting in specific recommendations for strengthening that plan; and that all proposed changes in HMDC zoning provisions relating to resource protection be submitted to the Division for comment and approval, prior to the proposal to the public.

RESPONSE: Incorporation of the Hackensack Meadowlands District in the Coastal Management Program as a Geographic Area of Particular Concern in 1980 recognized the divergent competing interests in this area, as well as the need to preserve wetlands and other environmental resources. The Division routinely reviews and comments upon proposed changes to the Hackensack Meadowlands District Commission Master Plan. In addition, staff from both agencies coordinate on development application reviews to ensure that environmental resources zoned for protection are indeed protected. The proposed revision to provide the Division discretion to review and approve proposed changes to the plan is sufficient to effect these goals.

SUBCHAPTER 4. GENERAL WATER AREAS

AGENCY NOTE: Although N.J.A.C. 7:7E-4.2, Water Area Policy Summary Table, was not proposed for amendment, this table summarizes the substantive requirements contained in rule. This section has therefore, been modified to reflect the adopted amendments.

7:7E-4.11(d) Docks and piers (recreational)

64. COMMENT: This proposal, which would limit dock widths to eight feet, should not apply to facilities used in commercial cargo, passenger and fishing service, where greater widths are often unavoidable.

RESPONSE: This policy is distinct from 7:7E-4.11(c), Docks and Piers (for Cargo and Fisheries Movement), which provides for greater widths.

7:7E-4.11(e) Maintenance dredging

65. COMMENT: In the standards relevant to maintenance dredging, the word "documented" should be substituted for "known." The Department should not place restricted window clauses on dredging unless adequate evidence to support those restrictions is available.

RESPONSE: The principal purpose for amending this policy is to provide a predictable definitive basis for imposing seasonal restrictions. The word "known" employed in a similar context for years under the Endangered or Threatened Wildlife or Vegetation Species Habitats Policy has proven workable by all parties concerned and should prove satisfactory in this application. See Comment number 60 above for the degree of reliance placed on the word "known" by the New Jersey Builder's Association.

66. COMMENT: The regulations should differentiate between major and minor maintenance dredging so that minor amounts of sediment could be removed periodically without going through the detailed permitting process required for a major project.

RESPONSE: Such a change would involve the Consolidated Procedural Rules (N.J.A.C. 7:7) and would require a separate rulemaking action. Under existing rules each permit is valid for five years which provides for periodic removal to maintain navigable water depths. Regardless of the volume of sediment to be dredged, the relative location of environmentally sensitive resources and the ultimate disposition of the dredged material must be addressed. Accordingly, there is no basis for a separate procedure.

67. COMMENT: Existing seasonal dredging restrictions already apply to some facilities. Imposition of additional seasonal restrictions based on spawning and wintering areas of certain marine species could interfere with necessary maintenance.

RESPONSE: The policy is structured such that seasonal restrictions would only be imposed if water quality would likely violate State Water Quality Standards, or if pre-dredging chemical analysis of sediments reveals significant contamination. In low salinity portions of estuaries where turbidity is naturally high, it is likely that dredging would meet the specified acceptability conditions.

68. COMMENT: Spawning should be listed as a reason for requiring seasonal restrictions.

RESPONSE: The principal purpose for amending this policy has been to increase the level of predictability in dredging acceptability decision-making. A generic reference to spawning as the basis for imposing seasonal restrictions would not be consistent with this goal. The strategy as defined in the policy provides for imposition of restrictions only when projected water quality as a result of the dredging operation will likely violate State Water Quality Standards or if there is evidence of contaminated sediment. Consideration for spawning for specific species of concern is addressed in the policy, but only when water quality problems are likely.

7:7E-4.11(g) New dredging

69. COMMENT: The policy should be amended to prohibit new lagoons next to wetlands in accordance with the Pinelands Comprehensive Management Plan.

RESPONSE: The proposal prohibits this activity in wetlands and discourages it elsewhere. Under this proposal, creation of new lagoons next to wetlands would likely be denied. If, however, all water quality and special area concerns could be satisfied, it would not be necessary to completely prohibit the creation of additional water area.

70. COMMENT: New dredging for the purpose of rehabilitating lakes, ponds and reservoirs should be encouraged provided a sedimentation control plan is developed.

RESPONSE: N.J.A.C. 7:7E-4.11(g)2iv has been amended to authorize this use subject to submittal of an acceptable sedimentation control plan.

71. COMMENT: The deletion of Surf Clam Areas from the provision concerning imposition of seasonal limitations is questionable.

RESPONSE: The basis for this deletion is four fold: destruction of known surf clam beds is prohibited under 7:7E-3.3; ocean bottom sediments where surf clams are likely to occur are generally sand and gravel, not prone to produce high concentrations of suspended sediment; no data concerning mortality of surf clam eggs and larvae due to dredged induced turbidity is available; and dredging is likely to be limited to inlets which typically are characterized by high current velocities.

7:7E-4.11(h) Dredged material disposal

72. COMMENT: Dredged material disposed in lakes, ponds, and reservoirs should be prohibited rather than conditionally acceptable.

RESPONSE: There was never an intent to provide for disposal of "foreign" dredged material in lakes, ponds and reservoirs. Rather, the acceptability conditions allowed for creative disposal, that is, temporary dewatering containment, freshwater wetlands creation, dredge spoil islands, etc., in certain circumstances. As a result of this comment, however, the Division has reconsidered the need for such disposal alternatives and has determined they have limited application in conjunction with the dredging of lakes, ponds and reservoirs. In these cases, the principal intent of the dredging is to slow the natural succession of these water bodies and maintain open water. Accordingly, the policy has been amended to prohibit this use of lakes, ponds and reservoirs.

73. COMMENT: A definition of uncontaminated dredged material should be included in the adopted policies.

RESPONSE: Disposal of dredged material is to be done in accordance with Federal standards which are found at 40 CFR 230, as amended. The definition is set forth in those regulations which are referenced in N.J.A.C. 7:7E-4.11(h)2iii.

74. COMMENT: The Division should reconsider its proposal to classify upland dredged material disposal sites as "preferred." State-of-the-art information indicates that ocean disposal may be a more viable environmentally sensitive option in the future.

RESPONSE: This aspect of the proposal has been deleted. Ocean disposal of dredged material is subject to USEPA guidelines (40 CFR 230). The Department regulation is limited to those aspects of the dredging operation which occur within the State coastal zone. Therefore, it would be inappropriate to adopt a policy which may conflict with the more expansive Federal regulations.

75. COMMENT: The provision discouraging dredged material disposal in open bays and semi-enclosed back bays where the water depth is less than six feet is inconsistent with the Corps of Engineers alternatives to ocean disposal of dredged material. The Corps has determined that large containment islands and nearshore containment diked areas are feasible alternatives to ocean disposal.

RESPONSE: Dredged material disposal can have significant adverse effects, such as introduction of heavy metals, burial of benthic flora and fauna and increased turbidity. Therefore, dredged material disposal is discouraged in shallow water bodies which have low assimilative capacities. This does not rule out, however, environmentally sensitive contained disposal on a case-by-case basis. To the contrary, the adopted policy specifically states that the use of uncontaminated dredged material to create new wetlands or islands in any General Water Area is conditionally acceptable depending upon an evaluation of the biological value of the wetland or island gained compared with the biological value of the water area lost.

76. COMMENT: Although some dredge holes exhibit poor water quality and reduced benthic productivity, they may provide important wintering habitat and serve as concentrators of certain fish species. A biological evaluation of any proposed dredge hole fill should be conducted prior to authorization of disposal.

RESPONSE: The Division agrees and additional provisions at (h)2v concerning aquatic resource surveys have been incorporated as part of the policy.

77. COMMENT: Sand and gravel extraction from productive surf clam areas should be prohibited.

RESPONSE: Any use which would result in the destruction of Surf Clam Areas is prohibited under 7:7E-3.3.

78. COMMENT: The policy should make clear that sand and gravel extraction is not prohibited in lakes, ponds, reservoirs which were created by sand and gravel extraction.

RESPONSE: N.J.A.C. 7:7E-4.11(l) has been amended to make this use conditionally acceptable for those water bodies created by the extraction process.

7:7E-4.11(m) Submerged infrastructure

79. COMMENT: The proposed amendment which substitutes the phrase "minimizing the possibility of puncturing by anchors" for "avoid puncturing by anchors" weakens the policy and should be abandoned.

RESPONSE: The amendment as proposed responds to concerns expressed by the pipeline industry that no pipeline can be buried at a reasonable depth to avoid snagging anchors. It has evidenced this with an excerpt from a Department of the Navy Design Manual for Harbor and Coastal Facilities. The Department finds that the proposed language is sufficient to ensure the potential for puncturing these facilities is minimized.

SUBCHAPTER 5. GENERAL LAND AREAS

7:7E-5.3 Coastal growth rating

80. COMMENT: The Division should maintain all barrier island regions as "Development Regions." There is no reason to segregate water's edge housing from other types of development and to give it a lesser classification of acceptable development intensity.

RESPONSE: Under existing regulations, barrier islands are composed entirely of special areas and are not subject to the Land Areas Policy. Accordingly, they never have been classified as "development regions." The only constraint to development intensity was via the High Rise Housing Policy (7:7E-7.2h), which requires that "The proposed structure . . . be in character with surrounding transitional heights and residential densities." The adopted policy simply establishes maxi-

mum acceptable development intensities for buildable portions of barrier islands as is done for all Land Areas, including "Development Regions."

81. COMMENT: The division of Stafford Township into two separate development zones based upon the location of Route 72 is arbitrary and should be amended to reflect the past development history of the Township. Stafford Township should, in its entirety, be included in the "extension region."

RESPONSE: The Division acknowledges that the categorization of the coastal zone into fourteen growth regions with roads as boundaries may be somewhat artificial, but it represents the best fit to date to balance environmental sensitivity and development potential. The "limited growth" designation for southern Stafford Township, all of Eagleswood Township, and the remainder of the Mullica-Southern Ocean Region recognizes the existing level of development, the strength of new development pressures as compared to other areas, and the overall sensitivity of the natural resources of the region. The regional plan under CAFRA is totally consistent with the plans of other regional planning agencies responsible for guiding future development in the region. Although the Pinelands Commission does not exercise regulatory jurisdiction east of the Garden State Parkway, this area is within the Pinelands National Reserve. Both the Pinelands Comprehensive Management Plan and the Ocean County Future Development Plan (1980-2000) designate the area in question for moderate intensity residential development, which is entirely consistent with Coastal Management Program, provided development potential is high.

7:7E-5.4 Environmental Sensitivity rating

82. COMMENT: The effect of expanding the scope of the definition of high environmental sensivity to conform with the consolidated "wet and high permeability moist soils policy" will result in the classification of huge amounts of land as environmentally sensitive. This, in turn, may result in a lower acceptable development intensity. There is no basis for such a change and this proposal should be abandoned.

RESPONSE: The existing policies identify three categories of environmentally sensitive soils: high permeability wet soils under General Land Areas, high permeability moist soils under Resource Policies, and wet soils, also a Resource Policy. Despite the fact that each policy is concerned with a combination of high soil percolation and shallow depth to water table and potential adverse impact to groundwater, the threshold soil depths are not consistent. The Deparment's intent in consolidating the policies to reference one soil depth of concern was to provide greater predictability and uniformity in decision-making. The Department acknowledges, however, that five foot depth may be overly conservative in light of buffer and stormwater management requirements. Accordingly, the adopted depth of concern has been amended to four feet to correspond to New Jersey standards for sub-surface sewage disposal systems (so-called "Chapter 199," N.J.A.C. 7:9-2.1 et seq.) and maximum seasonal high water table depth for soils of concern.

83. The procedure for determining infill at N.J.A.C. 5.5(b)2iii has been modified to clarify that land areas abutting limited access transportation corridors are not included in the determination. These corridors function as a physical barrier to orderly growth and, as such, should not be included as part of the development potential assessment of a site.

SUBCHAPTER 6. GENERAL LOCATION POLICIES

7:7E-6.3 Secondary impacts

84. COMMENT: Any modification to this policy should be tied to quantifiable and real adverse impacts, which developments are known to have surrounding facilities. The reference to "the site" makes the revision unclear.

RESPONSE: The revision makes explicit the present Division practice of assessing off-site impacts to the region surrounding a proposed development. Subsection (a) has been amended to improve clarity.

SUBCHAPTER 7. USE POLICIES

7:7E-7.2(b) Water area and water's edge housing

85. COMMENT: The provison allowing expansion of the total area of water coverage if such expansion is "functionally necessary" for water dependent uses should be changed to "functionally essential" to more appropriately convey the Division's intention to substantially limit the opportunity for expanded development in this sensitive area.

RESPONSE: The Division disagrees. Both terms define the intent of the provision and, as such, the term "necessary" is satisfactory.

86. Language at 7.2(b)2 has been changed from "deemed" to "demonstrated to be" in order to conform with changes made to N.J.A.C. 7:7E-3.16(b).

7:7E-7.2(c) Floating homes

87. COMMENT: The definition of floating homes should be revised to be consistent with the adopted Coastal Permit Program Procedural Rules (N.J.A.C. 7:7), that is, designed and intended as a permanent and seasonal dwelling.

RESPONSE: The Division concurs and has corrected the adopted definition.

88. COMMENT: All but two of the commentors expressed support for a prohibition of this use of the waters of the coastal zone for reasons related to non-water dependency, potential for displacement of water dependent uses, potential for adverse water quality impacts, shading nearshore aquatic habitats and aesthetics. Two commenters recommended that the prohibition be modified to a stringent conditional use as an aid to economically troubled marinas and in the interest of promoting tourism and recreation.

RESPONSE: The Department closely scrutinized the feasibility of a stringent conditional use policy and concluded that such a policy would be difficult to implement and enforce, as well as inconsistent with the long-term Departmental practice of prohibiting housing over the water and providing for current and future water dependent uses, both onshore and in the water. In short, the benefits that may accrue to tourism and recreation are not sufficient to modify these basic coastal management policies.

89. The policy at 7:7E-7.2(c) has been amended from proposal to clarify that floating homes registered with the New Jersey Department of Motor Vehicle prior to June 1, 1984 are not subject to the policy.

7:7E-7.2(f) Affordable housing

90. COMMENT: The definition of affordable housing should be revised to conform to the new standards imposed by the Federal National Mortgage Association, which establish 25 percent of the monthly income of a renter as the limit of monthly expenditures for housing.

RESPONSE: The Division concurs and has modified N.J.A.C. 7:7E-7.2(f)1v to refer to H.U.D. requirements which address these concerns.

91. COMMENT: The term region, defined as the county in which the housing is proposed to be constructed, is contrary to the Mt. Laurel II decision. Within the definition of low and moderate income households, the region should be defined as an "area" in accordance with data published annually by the United States Department of Housing and Urban Development for Primary Metropolitan Statistical Areas.

RESPONSE: The Division concurs. Appropriate changes have been made to (f)1vii.

92. COMMENT: The definition of income should be revised to concur with the HUD regulations governing Section 8 eligibility at 24 CFR 813.106. This would include many other forms of non-taxable income in the definition and insure housing eligibility for the most deserving individuals.

RESPONSE: The Division concurs and has modified this section accordingly.

93. COMMENT: The definition of monthly carrying costs should include utilities and mandatory costs associated with the homeowners association, landlord or another similar group.

RESPONSE: The Division concurs and has modified (f)1vi to reflect this comment.

94. COMMENT: The definition of region as being the county is not in accordance with previous Mt. Laurel II New Jersey Supreme Court decisions. It is proposed that region be defined as "a geographic area of no less than two nor more than four contiguous counties which exhibit significant social, economic and income similarities and which constitute to the greatest extent practicable the primary metropolitan statistical areas as last defined by the United States Census Bureau."

RESPONSE: The Division disagrees. For the purposes of this policy it is unnecessary to define "region" in addition to "area." Area has been defined as the appropriate PMSA for the purpose of defining low and moderate income households. This is the primary use of such a definition in the application of this policy. It defines as inclusionary requirement for a residential development. Determination of the regional need and the municipal share of this need is not a policy requirement at this time, and will be addressed by the courts and municipal submissions to the State Council on Affordable Housing.

95. COMMENT: The scope of the affordable housing policy is too limited in that it does not include the Waterfront Regions of the State, especially along the Hudson River. Many believe that the Waterfront Development Law (N.J.S.A. 12:5-1 et seq.) is broad enough to warrant application of the policy in that its legislative purpose was to guard the economic well-being and general welfare of the state. Support is also found in In Re Egg Harbor Associates (Bayshore Center), 94 NJ 358 (1983) in that the determination of the duty of DEP to impose affordable housing requirements came from an interpretation of general welfare.

RESPONSE: The Division will be requesting a formal opinion from the Office of the Attorney General to determine the extent of its jurisdiction with regard to the applicability of the affordable housing policy under the Waterfront Development Law.

96. COMMENT: The scope of the affordable housing policy is too limited in that it does not include the Urban Areas Regions of the State as defined in the special urban areas policy (N.J.A.C. 7:7E-3.42).

RESPONSE: The Division disagrees. The purpose of the exclusion of Urban Areas from the policy is to encourage the revitalization of these areas. The change proposed by the Division now includes a provision that the policy would apply if public funds are used in the development of housing project or if direct displacement of low and moderate income households would occur as the result of a project in an urban area. The Division believes that this provision protects the public interest in regard to affordable housing in these areas. It should also be mentioned that Atlantic City is not considered to be a special urban area; therefore, the affordable housing policy is applicable to projects in this city.

97. COMMENT: The selection of 100 units as the threshold for the application of the affordable housing policy is without a sound policy basis. The flexibility offered in policy compliance opportunities allows for the enforcement of the policy at the CAFRA threshold of 25 or more residential units. Developers of 25 to 50 units should be allowed to satisfy obligations through contributions not construction.

RESPONSE: The Division disagrees and recognizes that there is a variety of opinions on this issue. However, the Division believes that 100 units represent a feasible size for inclusionary developments.

98. COMMENT: The requirement that proposed developments subject to the policy shall provide at least 10 percent of the units to be built at prices affordable by low income households and at least 10 percent of the units at prices affordable by moderate income households will result in housing at the upper limits of the low and moderate income ranges. It is recommended that a provision be added requiring that affordable units be offered for sale or rented at a reasonable cross-section of affordability.

RESPONSE: The Division acknowledges this concern but believes that if a developer can meet the standards set as affordability limits, the policy requirement has been fulfilled. These figures are derived from the New Jersey Supreme Court's Mount Laurel II decision.

99. COMMENT: There is not enough experience with resale controls to state in the policy when special consideration will be given to a developer because market units are priced at or close to the affordable units. Also, no definition of the consequences of the consideration is given.

RESPONSE: The Division recognizes that identical pricing of affordable and market units may make the affordable units unsaleable due to the resale restriction, and feels this is an unfair burden to place on a developer. To add clarity, the policy at (f)5 has been amended to state that resale restrictions will not apply if the pricing is as such.

100. COMMENT: In the section of the policy which discusses how an affordable housing requirement may be met (7:7E-7.2(f)), the Division should describe the characteristics of "a location agreed to by the Division of Coastal Resources as a special case."

RESPONSE: A special case location outside of the project municipality is acceptable when the construction or rehabiliation meets a need for affordable housing in the area. This has been added to the policy at (f)6ii.

101. COMMENTS: Contributions for affordable housing condition fulfillment should not be limited to the State, county improvement authority or local housing authority.

RESPONSE: The Division agrees. A policy revision at (f)7i states that a contribution may be dedicated to a specific project to be conducted by an appropriate state, county, municipal, or non-profit agency, entity, authority or organization.

102. COMMENT: There is no formula for determining the contribution to be required of a rental developer. A formula should be developed for this purpose.

RESPONSE: The Division agrees and is attempting to develop such a formula as a guideline.

103. COMMENT: The contribution formula should produce a benefit equivalent to one affordable unit for every five units. If it costs $15,000 to subsidize one affordable unit, the formula should be capable of generating $15,000 for every five units of market rate housing in a development.

RESPONSE: The Division recognizes there is a variety of methodologies which could be used in the development of a formula. The Division believes the adopted formula is equitable for both the State and the permit applicant.

104. COMMENT: The provision requiring that the construction of the affordable units must commence prior to the occupancy of the CAFRA permit structure is ineffective. Construction and sales of all of the market units could occur prior to the start of the affordable units and the affordable housing commitment could be reneged on.

RESPONSE: The Division acknowledges this. The provision has been changed at (f)8 to state that a phase-in schedule for the affordable units must be provided for review and approval by the Division prior to construction.

105. COMMENT: The policy provision which states that the Division will consider recent affordable housing activities by a developer in determining an affordable housing obligation is vague and unnecessary.

RESPONSE: The Division concurs and has deleted proposed (f)10.

106. COMMENT: A total exemption from the affordable housing policy when a municipality is judged to be in compliance with Mt. Laurel II is inappropriate. CAFRA has a statutory obligation to consider applications for development in the coastal zone. The Division should also consider its obligation in light of the thought that the great need for affordable housing supersedes the ability of the market to respond.

RESPONSE: The Division believes that if a municipality has received a judgment of compliance for its housing zoning ordinances/plan by a New Jersey Supreme Court appointed Mount Laurel judge or the State Council on Affordable Housing and the plan provides for an adequate amount of affordable housing in CAFRA approvable areas (to be determined by the Division) the affordable housing policy should not apply. The policy at (f)9 has been revised to clearly state this.

107. COMMENT: The recent passage of the fair housing act (P.L. 1985, Chapter 222) has alleviated the responsibilities of the Division to enforce an affordable housing policy.

RESPONSE: The Division continues to have a statutory obligation to enforce the policy. However, this position will be subject to ongoing re-examination after the State Council for Fair Housing has begun operation.

7:7E-7.2(i) Large scale multi-use development

108. COMMENT: Comments upon this proposal ranged from a recommendation to delete the policy altogether to a request to leave the policy as is. Alternative recommendations provided for discouraging this use in limited growth regions and/or requiring a 1,000 foot buffer along the perimeter of large scale developments in all growth regions.

RESPONSE: In response to these comments, the Division has reassessed the proposal and determined that the provision concerning explicit consideration of induced growth outside the site boundary is sufficient to preclude scattered infill development. The additional requirement for a 1,000 foot perimeter buffer has been withdrawn.

7:7E-7.3(c) Recreation areas within developments

109. COMMENT: The Division should recognize the negligible need for open space and, in particular, active recreation facilities, in small developments, especially when they are located within close proximity to existing recreation facilities.

RESPONSE: The Division in coordination with the Office of Green Acres has amended the language of the policy to provide for a determination of need prior to imposition of this requirement.

7:7E-7.3(d) Marinas

110. COMMENT: There appears to be no basis for eliminating the provison concerning limitation of non-water dependent land uses that preclude support facilities for boating as a means to encourage expansion of existing marinas.

RESPONSE: At first glance this appeared to be redundant with policy addressed elsewhere in the rules. Because it serves as a usefull cross reference and reinforces this land use objective, however, the proposed deletion has been abandoned and this provision will be retained.

7:7E-7.5 Transportation use policies

111. COMMENT: Catwalks and parking access to nearby water bodies should be a condition of new road construction projects.

RESPONSE: The Division agrees and the policy has been amended at (a)1iii.

112. COMMENT: Provision of pathways in industrial areas may subject strollers and cyclists to physical danger from movement of trucks, railroad cars and materials handling equipment.

RESPONSE: This use is encouraged along the edges of all water bodies. However, the Division acknowledges potential limitations and interprets this policy in a flexible manner by considering on a case-by-case basis the feasibility of routing a linear or even point access into or around industrial or port areas.

113. COMMENT: The policy should be expanded to include and recognize the validity of the NEPA (The National Environmental Policy Act of 1969, P.L. No. 91-180, 42 U.S.C. 4321) process used by NJDOT to determine the preferred alternative for new road construction.

RESPONSE: The Division does not require a separate EIS for those projects subject to NEPA requirements. Also it assesses a project's acceptability relative to all applicable Coastal Resource and Development Policies not just Transportation Use Policies. Review is subject to the State Review Process coordinated within the Department by the Division of Planning.

7:7E-7.6(c) Solid waste

114. COMMENT: The proposed provision prohibiting sanitary landfills in wetlands should be deleted. Implementation of this requirement would likely force the premature closure of existing landfills and would be potentially in conflict with landfill expansions acceptable under the Solid Waste Management Act.

RESPONSE: This use has always been prohibited under the procedural rules (N.J.A.C. 7:7) which implement the Wetlands Act. The subject change as part of the Coastal Resource and Development Policies just makes both sets of rules consistent. In instances of conflict between requirements of the Solid Waste Management Act and the Wetlands Act, the Department will refer directly to the statutes for resolution.

7:7E-7.8 Mining use policies

115. COMMENT: The policy amendment provides for submittal of a mine development and reclamation plan, the purpose of which is to minimize the area and time of disruption of agricultural operations and to provide for storage and restoration of all Class I, II and III soils. Although the area of disruption can be minimized, there is no way to effectively minimize the time of the disruptions or to restore the noted soils so that there will be no net loss in the area covered by these soils.

RESPONSE: The Division recognizes that reasonable balances must be struck between competing and conflicting uses of land with mineral deposits. The reclamation plan can ameliorate adverse impacts by incorporating imaginative reclamation and restoration planning into the mine development process. With respect to disruption of agricultural operations, development of a plan which addresses this issue will function as the basis of what constitutes "minimum" in a given situation. The Division contends that stock piling of prime top soil for ultimate reclamation of a site is feasible and appropriate.

116. COMMENT: The provision concerning no net loss in the area covered by Agricultural Class I, II and III soils should make clear that they need not be replaced in their original location.

RESPONSE: The policy has been amended at (a)8 to reflect industry concern that wet borrow pits would be prohibitively expensive to restore and to make explicit that replacement may be acceptable at another location at which these soils are not present.

117. N.J.A.C. 7:7E-7.11(e)1i has been amended to be consistent with modifications to N.J.A.C. 7:76-3.23, that is, provision for mitigation through construction of earthern berms has been deleted.

7:7E-7.14

118. The definition of high rise structure has been amended to clarify that grade is interpreted to mean existing pre-construction ground level.

SUBCHAPTER 8. RESOURCE POLICIES

119. GENERAL COMMENT: The reference to barrier free design regulations in the State does not, in and of itself, develop or communicate a much-needed Departmental policy statement which would promote, facilitate and/or effectuate the use of coastal resource areas by individuals with physical disabilities. In addition, the administrative citation should reference rules promulgated by the Department of Community Affairs.

RESPONSE: The appropriate citations have been included in the statement referencing barrier free design requirements. In addition, provision for barrier free access has been added to the Public Access Policy (7:7E-8.11), the Beach Special Area Policy (7:7E-3.20), and the Public Open Space Special Area Policy (7:7E-3.38).

7:7E-8.4 Water quality

120. COMMENT: The proposed amendment substitutes the word "inconsistent" with an areawide Water Quality Management (208) Plan pursuant to the Clean Water Act (33 U.S.C. 1251 et seq.) in place of "in conflict" with the 208 plan. The rationale for this change in not clear.

RESPONSE: This change was simply made to conform with language employed by the Division of Water Resources in their determination of consistency with approved 208 plans. The revision does not substantively change implementation of this policy.

7:7E-8.7 Stormwater runoff

121. COMMENT: Achieving the goal of good condition pasture land would require the DOT to buy significant amounts of extra right of way to accommodate retention basins necessary to maintain or exceed pre-development conditions.

RESPONSE: The intent of this policy is to simulate natural drainage systems and encourage natural filtration functions, which in the case of State highways would require swales along the edge of the right of way rather than detention or retention areas. The reference in the policy to good condition pasture land relates to the State Stormwater Management Act which in turn refers to standard runoff calculation methodology as defined in the U.S. Soil Conservation Service, Technical Release No. 55 and the Modified Rational Method.

7:7E-8.10 Air quality

122. COMMENT: The addition of "protection from air contaminants that injure human health, welfare or property" to the existing statement on air quality is redundant with the definition of air pollution under N.J.S.A. 26:2C-2 and is unnecessary.

RESPONSE: The policy requires conformance with all applicable State and federal regulations, standards, and requirements. The Coastal Management Program is one of many vehicles to ensure this conformance, and as such, it is entirely appropriate to incorporate language which reinforces existing air quality statutes.

123. The policy has been further amended to add "ozone" and "visibility" to the list of standards to conform to the New Jersey State Implementation Plan.

7:7E-8.11 Public access to the waterfront

124. COMMENT: Public access to the waterfront should be provided "unless there is a compelling reason not to do so" rather than to the maximum extent practicable as is proposed by the Division.

RESPONSE: The "maximum extent practicable" language has been employed in this and other contexts for several years and has proven to provide satisfactory guidance in day-to-day decision-making.

125. COMMENT: Municipalities which have active plans to provide but do not presently provide access to the water should not be eligible for Green Acres or Shore Protection Bond funding.

RESPONSE: The Division disagrees. If a municipality is actively working with Division to provide public access it would be counterproductive to limit eligibility for State funding.

126. N.J.A.C. 7:7E-8.11(b) has been expanded to address the need for both fishing access and barrier free access wherever feasible and warranted.

7:7E-8.12 Scenic resources and design

127. COMMENT: The wording of this policy should be changed to include the phrase "to the maximum extent practicable" after the words "enhances scenic resources" and "building and site design."

RESPONSE: The intent of the referenced section is to encourage development which enhances scenic resources and is compatible with its surroundings. This means that the Department fosters or supports the design and location of the development and favorably considers other aspects of the use in terms of the weighing process of the Coastal Resource and

Development Policies. Accordingly, maximum extent practicable in this context only muddles the interpretation of enhancement and compatibility.

7:7E-8.14 Solid waste

128. COMMENT: All residential developments should create and enforce recycling plans, not just residential developments over 99 units.

RESPONSE: The explicit requirement for development and implementation of a source separation and recycling plan for all commercial and industrial development and residential development of over 99 units represents a significant strengthening of this policy. The Division has determined that without a municipal or county recycling program only development of more than 99 units are of a scale to economically and procedurely (that is, via a homeowners association) implement such a requirement.

7:7E-8.15 Energy conservation

129. COMMENT: Energy conservation requirements for development only in the coastal area is discriminatory since all other new construction need only to comply with the requirements of the energy subcode.

RESPONSE: The Coastal Resource and Development Policies were adopted for the purpose of regional land use planning. Energy conservation was incorporated into these policies in order to assist in the implementation of the State Energy Master Plan. Supporting and encouraging energy conservation techniques will contribute to the goals of this program and the environmental quality of the coastal region.

130. COMMENT: The proposed 100 point evaluation system provides little guidance, is generally imbalanced, inaccurate and in some cases in direct conflict with provisions of the energy subcode.

RESPONSE: The proposed 100 point evaluation system was developed in order to provide the applicant with a broad range of conservation techniques which when utilized will comply with the Division's energy conservation policy. The proposed system should assist the applicant by providing guidelines for energy conservation techniques in residential developments.

131. COMMENT: The policy is subjectively enforced due to the open endedness of the phrase, "to the maximum extent practicable."

RESPONSE: As stated above, the implementation of this policy allows for a broad range of conservation techniques to be utilized in the construction of residential developments. The large number of available conservation techniques may appear to be subjective or open ended, but its purpose is to provide the applicant with a wide range of possible conservation techniques to comply with this policy.

132. COMMENT: The general comment that "only high rise and major commercial and industrial developments would be required to prepare an energy plan or audit" should be modified or clarified to include all substantial developments to be specified in an updated Memorandum of Understanding between the DEP and the DOE.

RESPONSE: DEP will limit audit requirements to those specified until an updated Memorandum of Understanding is agreed upon by the two agencies.

133. COMMENT: The issue of whether municipalities "with energy conservation ordinances consistent with NJDOE standards should be exempt from this requirement" needs further clarification.

RESPONSE: DOE currently functions as a review agency for energy conservation compliance of major facilities. In instances where DOE determines that municipal energy conservation ordinances are consistent with State standards, then those facilities within the municipality would be exempt from the policy.

7:7E-8.19 Flood prone areas

134. COMMENT: The Division in determining development acceptability in coastal high hazard areas should recognize Special Urban Areas, such as Asbury Park, as a special case. In these cases, there should be less stringent regulation to permit some aspects of development which would not otherwise be permitted under coastal regulations.

RESPONSE: Development that will help to restore the economic and social viability of Special Urban Areas (7:7E-3.41) is encouraged under existing coastal policy. However, this encouraged status is not sufficient to contravene the Basic Coastal Policy to protect the health, safety and welfare of people who reside, work and visit the coastal zone. The Division, in reviewing this matter, finds that it is entirely appropriate to prohibit the siting of residences in extremely hazardous areas (V-zones) in order to protect both life and property and to minimize the destruction of development near shore protection structures (bulkheads and seawalls) due to wave runup on these structures. The latter provision is designed to reduce public and private costs incurred due to storms, which is at least of equal importance in Special Urban Areas.

135. COMMENT: Implementation of the City of Asbury Park's Redevelopment Plan should be grandfathered under the present regulations, pursuant to which the Redevelopment Plan was prepared.

RESPONSE: The Redevelopment Plan, which was partially funded by a local coastal planning grant from the Division was modified after submission of the draft plans to include the following provision:

> The Department has made the City aware that DEP Staff is presently considering proposing a regulation which would prohibit residential development within a velocity zone (V-zone). Velocity zone is defined as an area subject to high velocity waters including but not limited to hurricane wave wash. The area is designated on the Flood Insurance Rate Map as Zone V1 to V30. The area in Asbury Park between Ocean Avenue and the Boardwalk is shown as a V-zone on a map published by FEMA dated September 1983. If this regulation were adopted by DEP, construction of residential development in the velocity zone may not be permitted. A determination regarding this issue will, however, have to be made in the context of a full CAFRA review related to a particular development project, considering among other things the possible applicability of the erosion hazard area policy and the fact that Asbury Park is a special urban area as defined in the Coastal Resource and Development Policies.

As stated under the provision's comment, sound coastal planning requires that future residential development be prohibited in delineated V-zones.

136. N.J.A.C. 7:7E-8.19(d) has been expanded to address the acceptability of commercial as well as residential uses in Coastal High Hazard Areas. The only development allowed in V-zone by this policy are uses which are either beach related

or promote tourism. These uses are also subject to storm damage, but they enhance the public's use and enjoyment of the beach and ocean.

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

SUBCHAPTER 1. INTRODUCTION

7:7E-1.1 Purpose

(a) This chapter presents the substantive policies of the Department of Environmental Protection regarding the use and development of coastal resources, to be used primarily by the Division of Coastal Resources in the Department in reviewing permit applications under the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., Wetlands Act, N.J.S.A. 13:9A-1 et seq., and Waterfront Development Permit Program, N.J.S.A. 12:5-3. The rules also provide a basis for recommendations by the Division to the Tidelands Resource Council on applications for riparian grants, leases, or licenses.

(b) In 1977, the Commissioner of the Department of Environmental Protection submitted to the Governor and Legislature the Coastal Management Strategy for New Jersey-CAFRA Area (September 1977), prepared by the Department as required by CAFRA, N.J.S.A. 13:19-16, and submitted for public scrutiny in late 1977. The Department revised the Coastal Managment Strategy for public review as the New Jersey Coastal Management Program—Bay and Ocean Shore Segment and Draft Environmental Impact Statement (EIS). In August 1978 the Governor submitted the revised New Jersey Coastal Management Program—Bay and Ocean Shore Segment and Final EIS for Federal approval, which was received in September 1978. In May 1980, the Department submitted further revisions, published as the Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement, for public review. In August 1980, the Governor submitted the final New Jersey Coastal Management Program and Final Environmental Impact Statement for Federal approval, which was received in September 1980. The Rules on Coastal Resource and Development Policies constitute the substantive core of the program. The Rules were amended on June 4, 1981, January 12, 1982, April 19, 1982, and February 7, 1983.

(c) (No change.)

7:7E-1.2 Jurisdiction

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

(f) This chapter shall apply, to the extent statutorily permissible, to the following DEP management actions in or affecting the coastal zone in addition to those noted at N.J.A.C. 7:7E-1.1:

1. (No change.)

2. Division of Water Resources:

i.-ii. (No change.)

iii. Permits for point source discharges under the New Jersey Pollutant Discharge Elimination System (N.J.S.A. 58:10A-1 et seq.).

iv.-xvi. (No change.)

3. (No change.)

4. Division of Waste Management: (Approval of sanitary landfill site (NJSA 13:1E-1 et seq.)

5.-7. (No change.)

(g) (No change.)

7:7E-1.3 Severability

(No change.)

7:71E-1.4

Review, revision, and expiration (No change.)

7:7E-1.5 Coastal decision-making process

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

(c) Definitions: The Coastal Resource and Development Policies are stated in terms of actions that are encouraged, required, acceptable, conditionally acceptable, discouraged, or prohibited. Some policies include specific conditions that must be met in order for an action to be deemed acceptable. Within the context of the Coastal Resource and Development Policies and the principles defined in Subsection (b) above, the following words have the following meanings.

. . .

"Department or "DEP" means the Department of Environmental Protection.

"Discouraged" means that a proposed use of coastal resources is likely to be rejected or denied as the Department has determined that such uses of coastal resources should be deterred and developers should be dissuaded from proposing such uses. In cases where the Department considers the proposed use to be in the public interest despite its discouraged status the Department may permit the use provided that mitigating or compensating measures are taken so that there is a net gain in quality and quantity of the coastal resource of concern.

"Division" means the Division of Coastal Resources within the Department.

"Encouraged" means that a proposed use of coastal resources is acceptable and is a use, by its purpose, location, design, and effect, that the Department has determined should be fostered and supported in the coastal zone.

"Prohibited" means that a proposed use of coastal resources is unacceptable and that the Department will use its legal authority to reject or deny the proposal***.*** ***[**, unless the use is essential to meet the mandate of another State of New Jersey environmental program, in which case the Department may permit the use provided that mitigating or compensating measures are taken so that there is a net gain in quality and quantity of the coastal resource of concern.]***

. . .

"Water dependent" means development that cannot physically function without direct access to the body of water along which it is proposed. Uses, or portions of uses, that can function on sites not adjacent to the water are not considered water dependent regardless of the economic advantages that may be gained from a waterfront location. Maritime activity, commercial fishing, public waterfront recreation and marinas are examples of water dependent uses, but only the portion of a development requiring direct access to the water is water dependent. The test for water dependency shall assess both the need of the proposed use for access to the water and the capacity of the proposed water body to satisfy the requirements and absorb the impacts of the proposed use. A proposed use will not be considered water dependent if either the use can function away from the water or if the water body proposed is unsuitable for the use. For example, in a maritime operation a dock or quay and associated unloading area would be water dependent, but an associated warehouse would not be water dependent.

1. Examples of water dependent uses include: marina activities requiring access to the water, such as ***commissioning and decommissioning new and used boats,*** boat repairs and short-term parking for boaters, storage of boats which are too large to be feasibly transported by car trailer ***(generally greater than 24 feet), rack systems for boat storage***, industries

such as fish processing plants and other industries which receive and quickly process raw materials by ship, commercial fishing operations, port activities requiring the loading and unloading of ships, and water-oriented recreation.

2. Water dependent uses exclude, for example: housing, hotels, motels, restaurants, warehouses, manufacturing facilities (except those which receive and quickly process raw materials by ship) dry boat storage for boats that can be transported by car trailer, long-term parking, parking for persons not participating in a water-dependent activity, *[boat sales]*, automobile junkyards, and non-water oriented recreation such as roller rinks and racquet ball courts.

"Water oriented" means development that serves the general public and derives economic benefit from direct access to the water body along which it is proposed. (Industrial uses need not serve the general public.) A hotel or restaurant, since it serves the public, could be water-oriented if it takes full advantage of a waterfront location. An assembly plant could be water-oriented if overland transportation is possible but water-borne receipt of raw materials and shipment of finished products is economically advantageous. Housing is not water-oriented despite the economic premium placed on waterfront housing, because it only benefits those who can afford to buy or rent the housing units.

. . .

7:7E-1.6 Mitigation

(a) When a permit shall allow the disturbance or loss of wetlands (see N.J.A.C. 7:7E-3.25) *[or intertidal and subtidal shallows (see N.J.A.C. 7:7E-3.15)]* by filling or other means, this disturbance or loss shall be compensated for by the creation or restoration of an area of wetlands *[or intertidal and subtidal shallows]* at least twice the size of the surface area disturbed, unless the applicant can prove through the use of productivity models or other similar studies, that by restoring or creating a lesser area, there will be no net loss in the environmental value of wetlands *[or intertidal shallows]* in the aquatic system. Mitigation must be performed prior to or concurrent with activities that will disturb wetlands or intertidal and subtidal shallows and immediately after activities that will temporarily disturb these habitats. The intent of the policy is to assure no net loss of aquatic habitat productivity, including flora and fauna.

(b) Where the Division permits mitigation surface area of less than 2:1, monitoring will be required by the permittee to validate the productivity model. In such cases, the Division *[will retain the right to request]* ***require*** additional mitigation if this indicates a net loss. Under no circumstances shall the mitigation area be smaller than the disturbed area. Creation of wetlands from existing intertidal and subtidal shallows is not an acceptable form of mitigation, nor is transfer of title of existing wetlands *[or intertidal or subtidal shallows]* to a government agency or conservation organization. The filling or destruction of wetlands *[and intertidal and subtidal shallows]* ***or other environmentally sensitive resource***, even if compensated for by mitigation, shall not be permitted unless acceptable under the applicable special area policy (N.J.A.C. 7:7E-3).

(c) Mitigation shall also be selectively considered on a case-by-case basis as compensation for other policies not able to be met by a particular project. In general, mitigation should be similar in type and location to the resource disturbed or destroyed, i.e., replacement in kind within the same watershed. The Division will, however, consider proposals for mitigation that differ in type and/or location from the disturbed or destroyed resource provided the mitigation would provide a major contribution to meeting one of the Basic Coastal Policies.

SUBCHAPTER 2. LOCATION POLICIES

(No change.)

SUBCHAPTER 3. SPECIAL AREAS

7:7E-3.1 Introduction

(a) Special Areas are those 45 types of coastal areas which merit focused attention and special management policies. This subchapter divides Special Areas into Special Water Areas (see N.J.A.C. 7:7E-3.2 through 3.16), Special Water's Edge Areas (see N.J.A.C. 7:7E-3.17 through 3.31), Special Land Areas (see N.J.A.C. 7:7E-3.32 through 3.34), and Coastwide Special Areas (see N.J.A.C. 7:7E-3.35 through 3.45).

1.-4. (No change.)

(b) (No change.)

7:7E-3.2 Shellfish beds

(a) (No change.)

(b) Any development which would result in the destruction of presently productive shellfish beds is prohibited, unless the development is of national interest and no prudent and feasible alternative sites exist.

1. (No change.)

2. If the development is of national interest, and will result in the destruction of presently productive shellfish beds, the applicant shall be responsible for the expense incurred to salvage the resource. All such programs shall be coordinated with the appropriate shellfish management agency.

(c) Any coastal development which would result in contamination or condemnation of shellfish beds is prohibited. Development which would significantly alter the water quality, salinity regime, substrate characteristics (as through runoff and sedimentation), natural water circulation pattern, or natural functioning of the shellfish beds during the construction or operation of the development is prohibited.

(d) Water dependent development which requires new dredging adjacent to shellfish beds is discouraged and shall be managed so as not to cause significant mortality of the shellfish resulting from increase in turbidity and sedimentation, resuspension of toxic chemicals, or to otherwise interfere with the natural functioning of the shellfish bed.

1. (No change in text.)

2. Maintenance dredging of existing navigation channels is conditionally acceptable. State-managed shellfish recovery programs are encouraged prior to dredging.

(e) If there is a delay of more than one year between completion of permit application review and initiation of approved activity, the shellfish resource shall be resurveyed. If there is a significant change in the resource, new mitigation measures may be required by the Department. ***The applicant shall coordinate any shellfish resource inventory with the Bureau of Shellfisheries to ensure it is conducted in the appropriate manner utilizing best available techniques.***

(f) Rationale: See the OAL Note at the beginning of this subchapter.

7:7E-3.3 (No change.)

7:7E-3.4 Prime fishing areas

(a) Prime Fishing Areas include tidal water areas and water's edge areas which have a demonstrable history of sup-

porting a significant local quantity of recreational or commercial fishing activity. The area includes all coastal jetties and groins and public fishing piers or docks. Prime Fishing Areas also include all red line delineated features within the State of New Jersey's three mile territorial sea illustrated in: B.L. Freeman and L.A. Walford (1974) Angler's Guide to the United States Atlantic Coast Fish, Fishing Grounds and Fishing Facilities, Section III and IV ***or as indicated on New Jersey's Specific Sport and Commercial Fishing Grounds Chart (page 14) contained in "New Jersey's Recreational and Commercial Ocean Fishing Grounds," Long and Figley (1984)***. While this information source applies only to the Delaware Bay and Atlantic Ocean shorefronts, prime fishing areas do occur throughout the coastal zone.

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

7:7E-3.5 Finfish migratory pathways

(a) "Finfish migratory pathways" are waterways (rivers, streams, creeks, bays, inlets) which can be demonstrated to serve as passageways for diadromous fish to or from seasonal spawning areas, including juvenile anadromous fish which migrate in autumn and those listed by H.E. Zick (1977) "New Jersey Anadromous Fish Inventory" NJDEP Miscellaneous Report No. 41, and including those portions of the Hudson and Delaware Rivers within the coastal zone boundary.

1. Species of concern include: alewife or river herring (Alosa pseudoharengus), blueback herring (Alosa aestivalis), American shad (Alosa sapidissima), stripe bass (Morone saxatilis), Atlantic sturgeon (Acipenser oxyrhynchus), Shortnose sturgeon (Acipenser brevirostrum) and American eel (Anguilla rostrata).

(b)-(e) (No change.)

7:7E-3.6-3.9 (No change.)

AGENCY NOTE: The text of N.J.A.C. 7:7E-3.10 and other sections within the rule have been corrected by a Notice of Correction (see Agency Note at beginning of the Notice of Adoption). N.J.A.C. 7:7E-3.10, as adopted, is based upon that corrected text.

7:7E-3.10 Marina ***moorings***

(a) Marina moorings are areas of water that provide mooring, docking and boat maneuvering room as well as access to land and navigational channels for recreational boats. Typically maintenance dredging is required to preserve water depth.

(b) Non-water dependent development in a marina mooring area is prohibited. *[Water dependent development is conditionally acceptable provided there is no loss of boat slips or decrease in the water area provided for mooring.]*

(c) Any use that would detract from existing or proposed recreational boating use in marina mooring areas is discouraged.

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

7:7E-3.11 Ports

(a) "Ports" are water areas having, or lying immediately adjacent to, concentrations of shoreside marine terminals and transfer facilities for the movement of waterborne cargo (including fluids), and including facilities for loading, unloading and temporary storage.

1. Port locations in New Jersey include, among others, Newark, Elizabeth, Bayonne, Jersey City, Weehawken, Hoboken, Woodbridge, Perth Amboy, Camden, Gloucester City, Paulsboro and Salem.

2. Standards for a docking facility or concentration of docks for a single industrial or manufacturing facility may be found under the General Water Area Policy for Docks and Piers (N.J.A.C. 7:7E-4.11).

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

(e) Docks and piers for cargo movements are encouraged.

(f) (No change.)

7:7E-3.12 Submerged infrastructure routes

(a) (No change.)

(b) Any activity which would increase the likelihood of intrastructure damage or breakage, or interfere with maintenance operations is prohibited.

(c) (No change.)

7:7E-3.13 Shipwrecks and artificial reefs

(a) A "shipwrecks and artifical reefs" special area includes all permanently submerged or abandoned remains of vessels which serve as a special marine habitat or are fragile historic and cultural resources. This policy applies to tidal and ocean waters of the State of New Jersey three mile territorial sea, but outside of navigation channels.

1. Known sites include those shown either on National Ocean Survey (N.O.S.) Charts listed in the definition above of the Navigation Channel Special Area, or listed in the definition of the Navigation Channel Special Area (N.J.A.C. 7:7E-3.7(a)), or listed in: W. Krotee and R. Krotee, Shipwrecks Off the New Jersey Coast (1966), and B.L. Freeman and L.A. Walford, Angler's Guide to the United States Atlantic Coast Fish, Fishing Grounds, and Fishing Facilities (1974). In addition to known sites, unidentified remains of vessels may exist within tidal water.

2. Also included in this category are artificial fishing reefs which serve the same natural function as a habitat for living marine resources. (See also 7:7E-3.35, Historic and Archeological Resources).

(b) Acceptable uses of these submerged habitats include recreational and commercial finfishing and shellfishing, and scuba diving. In addition, construction of new or expanded artificial reefs by the deposition of weighed non-toxic material is conditionally acceptable provided that:

1. It can be demonstrated that the material will not wash ashore and interfere with either navigation as regulated by U.S. Coast Guard or commercial fishing operations; and

2. Placement of the material and ultimate management of the habitat is coordinated with the DEP Division of Fish, Game and Wildlife.

(c) Any use, except archeological research, which would significantly adversely affect the usefulness of this special area as a fisheries resource is prohibited. Persons conducting archeological research which significantly affects the usefulness of a shipwreck for fisheries purpose shall compensate for this loss by creation of an artificial reef or equal habitat value.

(d) (No change.)

7:7E-3.14 Wet borrow pits

(a) "Wet borrow pits" are scattered man-made lakes that are the results of surface mining for coastal minerals extending below groundwater level to create a permanently flooded depression. This includes but is not limited to, flooded sand, gravel and clay pits, and stone quarries.

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

(e) Disposal of dredge spoil is conditionally acceptable provided that:

(f) (No change.)

1.-5. (No change.)

6. Recreational uses in water and water quality buffer areas minimize wildlife disturbance.

(g)-(h) (No change.)

7:7E-3.15 Intertidal and subtidal shallows

(a) "Intertidal and subtidal shallows" means all permanently or twice-daily submerged areas from the mean high water line to a depth of four feet below mean low water.

(b) Development, filling, new dredging or other disturbance is generally discouraged but may be permitted in accordance with the Use Policy for the applicable water body type (see N.J.A.C. 7:7E-4). *[When development is permitted to destroy intertidal and subtidal shallows, this development must be mitigated in accordance with the Mitigation Policy (N.J.A.C. 7:7E-1.7), except when maintenance dredging consistent with N.J.A.C. 7:7E-4.11(r) or filling in a man-made lagoon consistent with N.J.A.C. 7:7E-4.4(i).]*

(c) Submerged infrastructure is conditionally acceptable, provided that:

1. There is no feasible alternative route that would not disturb intertidal and subtidal shallows;

2.-3. (No change.)

(d) (No change.)

7:7E-3.16 Filled water's edge

(a) "Filled water's edge" areas are existing filled areas lying between wetlands or water areas, and either the upland limit of fill, or the first paved public road or railroad landward of the adjacent water area, whichever is closer to the water. Some existing or former dredge spoil disposal sites and excavation fill areas are filled water's edge.

(b) The "waterfront portion" is defined as a contiguous area at least equal in size to the area within 100 feet of navigable water, measured from the Mean High Water Line (MHWL). This contiguous area must be accessible to a public road and *[have]* ***occupy*** at least 30 percent of *[its perimeter along]* the navigable water's edge.

(c) On filled water's edge sites with direct water access (i.e., those sites without extensive inter-tidal shallows or wetlands between the upland and navigable water), development shall comply with the following conditions:

1. The waterfront portion of the site shall be developed with a water dependent use (see N.J.A.C. 7:7E-1.6(c) for definitions) or left undeveloped for future water dependent uses;

2. On the remaining non-waterfront portion of the site, *[non-water related uses (i.e., uses that are neither water dependent nor water-oriented) are acceptable only where both water dependent uses and water-oriented uses are demonstrated to be impractical;]* ***provision of additional area devoted to water dependent or water-oriented uses my be required as a special case at locations which offer a particularly appropriate combination of natural features and opportunity for waterborne commerce and recreational boating;*** and

3. On large filled water's edge sites, of about 10 acres or more, where water dependent and water oriented uses can coexist with other types of development, a greater mix of land uses may be acceptable or even desirable. In these cases, a reduced waterfront portion, i.e., less than that provided by a 100 feet setback, may be acceptable provided that non-water related uses do not adversely affect either access to or use of the waterfront portion of the site.

(d) On filled water's edge sites without direct access to navigable water, *[non-water related uses are acceptable only where water-oriented uses are demonstrated to be impractical.]* ***the area to be devoted to water related uses will be determined on a case-by-case basis.***

(e) On filled water's edge sites with an existing or pre-existing water dependent use, that is, one existing at any time since July 1977, development shall comply with the following additional conditions:

1. For sites with an existing or pre-existing marina, development that would reduce the area currently or recently devoted to the marina is acceptable if:

i. For every two housing units proposed on the Filled Water's Edge the existing number of boat slips in the Marina mooring area (7:7E-3.14) is increased by one and at least 75 percent of the total number of slips (existing and new) remain open to the general public. Removal of uplands to create slips is acceptable;

ii. Marina services are expanded in capacity and upgraded (i.e., modernized) to the maximum extent practicable; and

iii. In-water or off site boat storage capability is demonstrated or upland storage is provided to accommodate at least 75 percent of the marina's boats, as determined by maximum slip capacity, 26 feet in length and longer, and 25 percent of the marina's boats less than 26 feet in length.

2. For sites with an existing or pre-existing water dependent use other than a marina, development that would reduce or adversely affect the area currently or recently devoted to the water dependent use is discouraged.

*[(f) Along the Hudson River and in other portions of the Northern Waterfront and Delaware River Region, where water dependent uses are deemed infeasible, non-water dependent and non-water oriented development may be acceptable on the Filled Water's Edge under the following conditions:

1. The developed land uses closest to the water's edge are water-oriented;

2. Currently active maritime port and industrial land uses are preserved;

3. Adverse impacts on local residents and neighborhoods are mitigated to the maximum extent practicable; and

4. All other Coastal Policies are met.]*

(f) Along the Hudson River and in other portions of the Northern Waterfront and Delaware River Region, where water dependent uses are demonstrated to be infeasible, some part of the waterfront portion of the site may be acceptable for non-water dependent development under the following conditions:

1. The development proposal addresses, as a minimum, past use of the site as well as potential for future water dependent commercial, transportation, recreation, and compatible maritime support service uses;

2. The developed land uses closest to the water's edge are water-oriented;

3. Currently active maritime port and industrial land uses are preserved;

4. Adverse impacts on local residents and neighborhoods are mitigated to the maximum extent practicable; and

5. All other Coastal Policies, with particular emphasis on water quality and fishing access, are met.*

(h) (No change.)

7:7E-3.17 Existing lagoon edges

(a) "Existing lagoon edges" are defined as existing man-made land areas resulting from the dredging and filling of wetlands, bay bottom and other estuarine water areas for the purpose of creating waterfront lots along lagoons for residential and commercial development.

1. Existing Lagoon Edges extend upland to the limit of fill, or the first paved public road or railroad generally parallel to the water area, which ever is less.

(b) Development of existing lagoon edges is acceptable provided that:

1. The proposed development is compatible with existing adjacent land and water uses;
2. Existing retaining structures are adequate to protect the proposed development, or the retaining structure is reconstructed without extending outshore more than 18 inches; and
3. New retaining structures are consistent with the acceptability conditions for filling (N.J.A.C. 7:7E-4.11(i)).
(c) (No change.)

7:7E-3.18 Natural water's edge floodplains
(a) (No change.)
(b) The natural water's edge floodplain standards shall not apply in portions of a floodplain which meet the definition of another special water's edge type (filled water's edge, existing lagoon edge, alluvial flood margins, dunes, overwash fans, erosion hazard areas, island corridor, wetlands, cranberry bogs, wet borrow pit margins, coastal bluffs, intermittent stream corridors).
(c) Development within 100 feet of a navigable water body, unless the use is water dependent. ("Navigable" and "water dependent" are defined at N.J.A.C. 7:7E-1.6(c).)
(d) Development elsewhere in the natural water's edge floodplains is discouraged unless:
1. It has no feasible alternate site outside of a natural water's edge floodplain; and
2. (No change.)
(e) Recreational uses, including but not limited to ballfields, tennis courts and golf courses are acceptable provided they do not reduce the flood dissipating value of the floodplain * **or preclude water dependent use of the area within 100 feet of navigable water***.
(f) Development must be consistent with all other coastal policies, in particular the performance standards found in the Flood Hazard Area Resource Policy (N.J.A.C. 7:7E-8.22).
(g)-(h) (No change.)

7:7E-3.19 Alluvial flood margins
(a) (No change.)
(b)-(d) (No change.)

7:7E-3.20 Beaches
(a) (No change.)
(b) Beaches can be found on all tidal shorelines, including ocean, bay and river shorelines.
(c) (No change.)
(d) Public access ***and barrier free access*** to beaches ***and the water's edge*** is encouraged. Coastal development that unreasonably restricts public access is prohibited.

7:7E-3.21 Dunes
(a) A "dune" is a wind or wave deposited or man-made formation of vegetated or drifting windblown sand that lies generally parallel to and landward of the beach, and between the upland limit of the beach and the foot of the most inland dune slope. "Dune" includes the foredune, secondary and tertiary dune ridges, as well as man-made *[dikes]* ***dunes***, where they exist.
1. Formations of sand immediately adjacent to beaches that are stabilized by retaining structures, or snow fences, planted vegetation, and other measures are considered to be dunes regardless of the degree of modification of the dune by wind or wave action or disturbance by development.
2. (No change.)
(b) Development is prohibited on dunes, except for development that has no prudent or feasible alternative in an area other than a dune, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:
1. (No change.)
2. Limited, designated access ways for pedestrian and authorized motor vehicles between public streets and the beach that provide for the minimum feasible interference with the beach and dune system and are oriented so as to provide the minimum feasible threat of breaching or overtopping as a result of storm surge or wave runup;
3.-7. (No change.)
(c) (No change.)

7:7E-3.22 Overwash fans
(a) An "overwash fan" is a gently sloping, conical accumulation of sediment, usually sand, that is deposited landward of the beach or dune by the rush of water up onto the beach, following the breaking of a wave, which carries sediment over the crest of a beach berm, a dune or a structure. An overwash fan may, through stabilization and vegetation, become a dune.
1. (No change.)
2. The landwash limit of overwash is the inland limit of sediment transport.
3. Verifiable aerial photography and other appropriate sources may be used to identify the extent of overwash.
(b) Development is prohibited on overwash fans, except for development that has no prudent or feasible alternative in an area other than an overwash fan, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:
1. Creation of dunes or expansion of existing dunes.
2.-5. (No change.)
6. Sand fencing to accumulate sand and aid in dune formation;
7.-9. (No change.)
(c) A development may be permitted if, by creating a dune with buffer zone or expanding an existing dune landward, the classification of the site is changed so as to significantly diminish the possibility of future overwash. On non-oceanfront lots where this is not feasible, mitigation may take the form of creation or enhancement of adjacent street end dunes including appropriately designed walk over structures.
(d) (No change in text.)

7:7E-3.23 Eroision hazard areas.
(a) "Erosion hazard areas" are shoreline areas that are eroding and/or have a history of erosion, causing them to be highly susceptible to further erosion and damage from storms.
1. (No change.)
2. Erosion hazard areas extend inland to the limit of the area likely to be eroded in less than 50 years, including developed and undeveloped areas.
(b)-(c) (No change.)

7:7E-3.24 Island corridor
(a) "Island corridors" are the interior portions of oceanfront barrier islands, spits, peninsulas and bay islands.
1. The oceanfront barrier island corridor encompasses that portion of barrier islands, spits and peninsulas (narrow land areas surrounded by both bay and ocean waters and connected

to the mainland) that lies upland of wetlands, beach and dune systems, filled water's edges, and existing lagoon edges. Island corridor does not apply to the headlands of northern Ocean County, Monmouth County, and the tip of Cape May County, which are part of the mainland.

2. The bay island corridor is composed of non-oceanfront islands surrounded by tidal waters.

3. The bay island corridor is that portion lying upland of wetlands and beaches but including the filled water's edge. The more restrictive provisions of the island corridor and filled water's edge shall apply (N.J.A.C. 7:7E-3.16).

(b) New or expanded development within the oceanfront barrier island corridor is conditionally acceptable provided that the ***criteria for High Development Potential are met, as defined in the policy for Land Areas (see N.J.A.C. 7:7E-5.5) and*** maximum acceptable intensities for development under the Land Area Policies are not exceeded.

(c) Water dependent development is discouraged on bay island corridors which do not abut a paved public road and ***and not served by a*** sewerage system with adequate capacity *[, but may be acceptable if there are no feasible alternatives and environmental impacts are minimized]*. All other types of development are prohibited in these areas.

(d) On bay island corridors which abut a paved public road and sewerage system with adequate capacity, water dependent development is acceptable and all other development is acceptable only at a low intensity (three to five percent of the bay island corridor (upland areas) may be covered with impervious surfaces).

(e) (No change.)

7:7E-3.25 Wetlands

*[(a) "Wetlands" are areas where the substrate is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

1. Wetlands regulated under the Wetlands Act of 1970 are delineated at a scale of 1:2,400 on official maps as listed at N.J.A.C. 7:7A-1.13. All coastal wetlands situated in the Raritan Basin, south along the Atlantic Ocean and north along Delaware Bay and River are subject to the Wetlands Act.]*

(a) "Wetlands" are areas regulated under the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.). They are delineated at a scale of 1:2,400 on official maps as listed at N.J.A.C. 7:7A-1.13. All coastal wetlands situated in the Raritan Basin, south along the Atlantic Ocean and north along Delaware Bay and River are subject to the Wetlands Act.

1. "Wetlands" are also areas where the substrate is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. (Lands subject to wetlands regulations are designated by wetlands maps found at N.J.A.C. 7:7-2.2.)

2. Under CAFRA, the Department regulates freshwater wetlands and forested wetlands such as white cedar stands, hardwood swamps, and other lowland forest types on sites proposed for the major developments requiring a CAFRA permit.

i. Generalized location maps of white cedar stands and other forested wetlands can be found in J. McCormick and L. Jones, The Pine Barrens Vegetation (1973), and forest type maps within the Department's Bureau of Forestry, and, in some areas, in the vegetation maps prepared by the New Jersey Pinelands Commission for the Comprehensive Management Plan.

3.-4. (No change.)

(b) In general, development of all kinds is prohibited in wetlands, unless the Department can find that the proposed development meets the following four conditions (see also N.J.A.C. 7:7A-1.5 and 1.7):

1. Requires water access or is water-oriented as a central purpose of the basic function of the activity (this policy applies only to development proposed on or adjacent to waterways). This means that the use must be water dependent as defined in N.J.A.C. 7:7E-2.2;

2.-4. (No change.)

(c) (No change in text.)

(d) If destruction of a wetlands takes place, mitigation shall be carried out consistent with N.J.A.C. *[7:7E-1.7]* ***7:7E-1.6***.

(e) Under the Wetlands Act, the activities of the Department, the Tidelands Resource Council, the State Mosquito Control Commission and county mosquito control commissions are exempted from the coastal wetlands policies within mapped coastal wetlands. However, activities which involve manipulation of the mean high water line are regulated under the Waterfront Development Statute (N.J.S.A. 12:5-1 et seq.)

(f) Development that adversely affects white cedar standards such as water table draw down, surface and groundwater quality changes and the introduction of non native plant species is prohibited.

(g) (No change.)

7:7E-3.26 Wetlands buffers

(a) (No change.)

(b) Development is prohibited in a wetlands buffer unless it can be demonstrated that the proposed development will not have a significant adverse impact and will cause minimum feasible adverse impact, through the use of mitigation where appropriate on the wetlands, and on the natural ecotone between the wetlands and the surrounding upland. The precise geographic extent of the required actual wetlands buffer on a specific site shall be determined on a case-by-case basis using these standards.

(c) (No change.)

7:7E-3.27 Cranberry bogs

(a) (No change.)

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

(d) Other uses of former cranberry bogs shall conform to the policies for Wetlands (N.J.A.C. 7:7E-3.25).

(e) (No change in text.)

7:7E-3.28 Wet borrow pit margins

(a) (No change.)

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

(d) Non-water dependent uses are prohibited unless acceptable filling (N.J.A.C. 7:7E-3.14(b)3 and 4) in the wet borrow pit removes these areas from the water's edge and reclassifies them.

(e) If residential development takes place landward of the wet borrow pit margin, use of the margin must be consistent with the requirements for a water quality buffer around wet borrow pits (see N.J.A.C. 7:7E-3.14(b)5iv, v and vi).

(f)-(h) (No change.)

AGENCY NOTE: See Agency Note at beginning of Adoption Notice regarding corrections to N.J.A.C. 7:7E-3.30, Coastal bluffs (recodified as N.J.A.C. 7:7E-3.29) and to N.J.A.C. 7:7E-3.37, Endangered or threatened wildlife or vegetation species habitat (recodified as N.J.A.C. 7:7E-3.36).

7:7E-3.29 Coastal bluffs

(a) A coastal bluff is a steep slope (greater than 15 percent) of consolidated (rock) or unconsolidated (sand, gravel) sediment that is formed by wind and water erosion forces, and which is adjacent to the shoreline or demonstrably associated with shoreline processes.

1. (No change.)

2. The landward limit of a coastal bluff is the landward limit of the area likely to be eroded within 50 years, or a point 25 feet landward of the crest of the bluff, which ever is farthest inland (see Figure 17).

3. Steep slopes (N.J.A.C. 7:7E-3.32) are isolated inland areas with slopes greater than 15 percent. All steep slopes associated with shoreline processes, i.e. adjacent to the shoreline or contributing sediment to the system, will be considered bluffs.

(b) (No change in text.)

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

7:7E-3.30 Intermittent stream corridors

(a) (No change.)

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

7:7E-3.31 Farmland conservation areas

(a) "Farmland conservation areas" are defined as contiguous areas of 20 acres or more (in single or multiple tracts of single or multiple ownership) with soils in the Capability Classes I, II and III or special soils for blueberries and cranberries as mapped by the United States Department of Agriculture, Soil Conservation Service, in National Cooperative Soil Surveys which are actively farmed or suitable for farming, unless it can be demonstrated by the applicant that new or continued use of the site for farming or farm-dependent purposes is not economically feasible. Farming or farm-dependent purposes include nurseries, orchards, vegetable and fruit farming, raising grains and seed crops, silviculture (such as christmas tree farming), floriculture (including greenhouses), dairying, grazing, livestock raising, and wholesale and retail marketing of crops, plants, animals and other related commodities.

(b) Farmland conservation areas shall be maintained and protected for open space or farming purposes. Farming or farm-dependent uses are permitted uses in farmland conservation areas. Housing is permitted only if it is an accessory use to farming. Mining is permitted only in accordance with a reclamation plan which meets the requirements of the Mining Use Policy (N.J.A.C. 7:7E-7.8).

(c) Continued, renewed, or new farming is encouraged in farmland conservation areas.

(d) (No change.)

7:7E-3.32 Steep slopes

(a) (No change.)

(b) Development on steep slopes is discouraged unless its use is essential to a reasonable use of the site and it can be shown to the satisfaction of the Division that the development will:

1.-5. (No change.)

(c) (No change.)

7:7E-3.33 Dry borrow pits

(a) (No change.)

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

7:7E-3.34 Historic and archeological resources

(a) "Historic and archeological resources" include objects, structures, shipwrecks, neighborhoods, districts, and man-made or man-modified features of the landscape and seascape, including archeological sites, which either are on or are eligible for inclusion on the State or National Register of Historic Places. The criteria for eligibility are defined at N.J.A.C. 7:4-4.2.

(b) (No change.)

(c) Development that incorporates historic and archeological resources in sensitive adaptive reuse is encouraged.

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

(f) Commercial salvage of shipwrecks over 50 years old is prohibited. Salvage for research and educational purposes is discouraged, but may be permitted provided that:

1. The proposed excavation project is in the public interest;

2. The purpose of the proposed activity is to further archeological knowledge;

3. The archeological knowledge gained will outweigh the loss to future archeologists and to the public of the preserved shipwreck;

4. The applicant has expertise in underwater archeology as outlined by the Federal Requirements (36 CFR66, pursuant to the Archeological and Historic Preservation Act of 1974 (P.L. 93-291), and through NEPA, the National Historic Preservation Act of 1966, as amended, and Executive Order 11593);

5. A State-designated archeologist will be present on location to supervise excavation;

6. Recovered artifacts will be preserved and/or restored and made accessible to researchers; and

7. A final report is prepared for the Department giving the following information about the shipwreck and its excavation: Historic background, description of environment, salvage methodology, artifact analysis, description of techniques used in preservation of artifacts, base map, narrative and grid map on artifacts recovered, bibliography, photographs, National or State Historic Register documentation and conclusions.

(g) (No change.)

7:7E-3.35 Specimen trees

(a) "Specimen trees" are the largest known individual trees of each species in New Jersey. The Department's Bureau of Forestry maintains a list of these trees (see New Jersey Outdoors, September-October 1984 for a listing of specimen trees). In addition, large trees approaching the diameter of the known largest tree shall be considered specimen trees.

(b) Development is prohibited that would significantly reduce the amount of light reaching the crown, alter drainage patterns within the site, adversely affect the quality of water reaching the site, cause erosion or deposition of material in or directly adjacent to the site, or otherwise injure the tree. The site of the tree extends to the outer limit of the buffer area necessary to avoid adverse impact, or 50 feet from the tree, whichever is greater.

(c) (No change.)

7:7E-3.36 Endangered or threatened wildlife or vegetation species habitats

(a) (No change.)

(b) Development of this special area is prohibited unless it can be demonstrated that endangered or threatened wildlife

or vegetation species habitat would not directly or through secondary impacts on the relevant site *[or in the surrounding region]* be adversely affected.

(c) (No change.)

(d) The following species were listed as endangered on the State list in January, 1984 ***as amended on May 6, 1985***:

FISH

Shortnose Sturgeon[1]	Acipenser brevirostrum

AMPHIBIANS

(No change)

REPTILES

Atlantic Hawksbill Turtle[1]	Eretmochelys imbricata
Atlantic Loggerhead Turtle[1]	Caretta caretta
Atlantic Ridley Turtle[1]	Lepidochelys kempi
Atlantic Leatherback Turtle[1]	Dermochelys coriacea
Bog Turtle	Clemmys muhlenbergi
Timber Rattlesnake	Crotalus horridus horridus
Corn Snake	Elaphe guttata guttata

BIRDS

Bald Eagle[1]	Haliaeetus leucocephalus
Peregrine Falcon[1]	Falco peregrinus
*[Osprey	Pandion haliaetus]*
Cooper's Hawk	Accipter cooperii
Least Tern	Sterna albifrons
Black Skimmer	Rynchops niger
Northern Harrier[2]	Circus cyaneus
Short-earned Owl[2]	Asio flammeus
Pied-billed Grebe[2]	Podilymbus podiceps
Upland Sandpiper	Bartramia longicauda
Cliff Swallow[2]	Petrochelidron pyrrhonota
Sedge Wren[2]	Cistothorus platensis
Henslow's Sparrow	Ammodramus henslowii
Vesper Sparrow[2]	Pooecetes gramineus
Piping Plover	Charadrius melodus
Roseate Tern	Sterna dougallii

MAMMALS

Sperm Whale[1]	Physeter catodon
Blue Whale[1]	Balaenoptera musculus
Fin Whale[1]	Balaenoptera physalus
Sei Whale[1]	Balaenoptera borealis
Humpback Whale[1]	Megaptera novaeangliae
Right Whale[1]	Eublaena glacialis

[1]Also on the Federal list.

[2]Status designation applicable to breeding populations only.

(e) The following species were listed as threatened species on the State list in January, 1984 ***as amended on May 6, 1985***:

FISH

(No change.)

AMPHIBIANS

(No change.)

REPTILES

Wood Turtle	Clemmys insculpta
Northern Pine Snake	Pituophia melanoleucus melanoleucus
Atlantic Green Turtle 1 & 3	Chelonia mydas

BIRDS

Osprey	***Pardion haliaetus***
Great Blue Heron	Ardea herodias
Red-shouldered Hawk	Buteo lineatus
Merlin	Falco columbarius
Red-headed Woodpecker	Melanerpes erythrocephalus
Bobolink	Dolichonyx oryzivorus
Savannah Sparrow	Passerculus sandwichensis[1]
Ipswich Sparrow	Passerculus sandwichensis princeps
Grasshopper Sparrow	Ammodramus savannarum*[*]**[1]*
Yellow-crowned Night Heron	Nyctanassa violacca

[1]Status designation applicable to breeding population only.

(f) No official State or Federal list of endangered or threatened vegetation (flora) species exists. The Federal Register, Volume 48, No. 229, November 28, 1983 lists species being considered for listing as endangered or threatened. In the interim, this policy will apply to those plants listed as "endangered" or "threatened" by D.B. Snyder and V.E. Vivian in: Rare and Endangered Vascular Plants Species in New Jersey, The Conservation and Environmental Studies Center, Inc. (1981) ***as well as to those plants listed in Section 6-204 of the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-6.24)***. Habitats of species eligible to be on the list are included in the definition so that the policy will apply to species identified since the last promulgations of the official list.

7:7E-3.37 Critical wildlife habitats

(a) (No change.)

(b) Development that would directly or through secondary impacts on the relevant site or in the surrounding region adversely affect critical wildlife habitats is discouraged, unless:

1.-3. (No change.)

(c) The Department will review proposals on a case by case basis.

(d) (No change.)

7:7E-3.38 Public open space

(a) (No change.)

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

(e) Provision of barrier free access to public open space is encouraged.

*[(e)]**(f)* (No change.)

7:7E-3.39 Special hazard areas

(a) "Special hazard areas" include areas with a known actual or potential hazard to public health, safety, and welfare, or to public or private property, such as the navigable air space around airports and seaplane landing areas, optential evacuation zones around major industrial and energy facilities and areas where hazardous materials are used or disposed, including adjacent areas.

(b) Coastal development, especially residential and labor-intensive economic development, within special hazard areas is discouraged. All development within special hazard areas must include appropriate mitigating measures to protect the public health and safety.

(c) (No change.)

7:7E-3.40 Excluded Federal lands

(a) "Excluded Federal lands" are those lands that are owned, leased, held in trust or whose use is otherwise by law

subject solely to the discretion of the United States of America, its officers or agents, and are excluded from New Jersey's Coastal Zone as required by the Federal Coastal Zone Management Act. They are listed in the New Jersey Coastal Management Program (August, 1980) at page 370.

(b) Federal actions on excluded Federal lands that significantly affect the coastal zone (spillover impacts) shall be consistent with the Coastal Resource and Development Policies, to the maximum extent practicable.

(c) (No change.)

7:7E-3.41 Special urban areas

(a) Special urban areas are those municipalities defined in urban aid legislation (N.J.S.A. 52:27D-178), qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. In 1984, Special Area included the following 24 coastal municipalities:

Asbury Park	Gloucester Twp.	Neptune Twp.	Rahway
Bayonne	Hoboken	New Brunswick	Trenton
Belleville	Jersey City	Newark	West New York
Bridgeton	Keansburg	North Bergen	Weehawken
Camden	Lakewood	Old Bridge	
Elizabeth	Long Branch	Passaic City	
	Millville	Perth Amboy	

(b) (No change in text.)

(c) Housing, hotels, motels, and mixed use development which is consistent with the Public Access Resource Policy (N.J.A.C. 7:7E-8.13)*, **including those provisions relating to fishing access as appropriate,*** are acceptable only over large rivers where water dependent uses are *[deemed]* ***demonstrated to be*** infeasible. These uses are conditionally acceptable on structurally sound existing pilings, or where at least one of the following criteria is met:

1. Where piers have been removed as part of the harbor clean up program, the equivalent pier area may be replaced in the same or another location;

2. Where structurally sound existing pilings have been reconfigured, provided that the total area of water coverage is not increased and that fisheries resources are not adversely impacted; or

3. Where expansion of the existing total area water coverage has occurred, provided that it can be shown that extensions are functionally necessary for water dependent uses. For example, additional piers and pilings would be conditionally acceptable for a marina which is a water dependent use.

(d) Housing hotels, motels and mixed use development are acceptable in filled water's edge areas, provided that development is consistent with the Filled Water's Edge Policy (N.J.A.C. 7:7E-3.16) and public access is provided for, as required by N.J.A.C. 7:7E-8.13.

(e) (No change in text.)

7:7E-3.42 Pinelands National Reserve and Pinelands Protection Area

(a) Definition

The Pinelands National Reserve includes those lands and water areas defined in the National Parks and Recreation Act of 1978, Section 502 (P.L. 95-625), an approximately 1,000,000 acre area ranging from Monmouth County in the north, south to Cape May County and from Gloucester and Camden County on the west to the barrier islands of Island Beach State Park and Brigantine Island along the Atlantic Ocean on the east. The Pinelands *[Protection]* Area is a slightly smaller area within the Pinelands National Reserve. It was designated for State regulation by the Pinelands Protection Act of 1979 (N.J.S.A. 13:18-1 et seq.). *[The Pinelands Commission has been mandated by the law to develop a comprehensive management plan for the area by December 15, 1980.]* ***The Pinelands Commission adopted a Comprehensive Management Plan in November 1980.*** Within the Pinelands *[Protection]* Area, the law delineates a Preservation Area, where the plan shall "preserve an extensive and contiguous area of land in its natural state, thereby insuring the continuation of a pinelands environment. . ." (Section 8c).

[1. Within the Pinelands National Reserve, there is also an area designated a Critical Area under the authority of N.J.S.A. 58:11-43 et seq. DEP has adopted special Central Pine Barrens Ground and Surface Water Quality Standards (N.J.A.C. 7:9-4.6(i) and (j)). This Central Pine Barrens Region is also the oil and gas pipeline exclusion area as defined in Use Policy 7:7E-7.4.]

1. Under the authority of the DEP Surface Water Quality Standards (N.J.A.C. 7:9-4), all surface waters within the boundaries of the Pinelands Area, except those waters designated as FWI, are designated "Pinelands Waters" which have special antidegradation policies, designated uses and water quality criteria (see N.J.A.C. 7:9-4.4, 4.5(d)6ii, 4.12(b), and 4.14(b)). The Department's present Ground-Water Quality Standards (N.J.A.C. 7:9-6), which were adopted on March 3, 1981, identify the "Central Pine Barrens Area" as the only part of the Pinelands distinguished from the rest of the State (N.J.A.C. 7:9-6.7(c)).*

2. The coastal municipalities wholly or partly within the Pinelands National Reserve Area include:

Atlantic County	
Brigantine City	Hamilton Township
Corbin City	Mullica Township*[**]*
Egg Harbor City*	Port Republic*
Egg Harbor Township	Somers Point City
Estell Manor Township	Weymouth Township
Galloway Township	
Burlington County	
Bass River Township*[**]*	Washington Township*[**]*
Cape May County	
Dennis Township	Upper Township
Middle Township	Woodbine Borough
Cumberland County	
Maurice River Township	
Ocean County	
Barnegat Township	Little Egg Harbor Township*[**]*
Beachwood Borough	Manchester Township
Berkley Township	Ocean Township
Dover Township	South Toms River Borough
Eagleswood Township[1]	Stafford Township
Lacey Township	Tuckerton Borough
Lakehurst Borough	

[1]Municipalities with areas in both the Pinelands *[Protection]* Area and the Coastal Zone. These areas are all within the Preservation Area of the Pinelands *[Protection]* Area (N.J.S.A. 13:18A-1 et seq.).

(b) Coastal development shall be consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, Section 502, creating the Pinelands

National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.).

(c) (No change.)

7:7E-3.43 Hackensack Meadowlands District

(a) (No change.)

(b) The HMDC will act as the lead coastal planning and management agency within this Special Area. The HMDC Master Plan Zoning Rules (N.J.A.C. 19:4) are adopted as part of the Coastal Management Program (see Appendix I) and the Hackensack Meadowlands District is designated a Geographic Area of Particular Concern (see section on GAPS in Chapter 4). The Division will periodically review Commission actions and will consider incorporating any proposed changes in HMDC plans or policies into the Coastal Management Program with particular attention to continued protection of wetlands and other environmental resources.

(c) (No change.)

7:7E-3.44 Wild and scenic river corridors

(a) (No change.)

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

7:7E-3.45 Geodetic control reference marks

(a) "Geodetic control reference marks" are traverse stations and benchmarks established or used by the New Jersey Geodetic Control Survey pursuant to P.L. 1934, C.116. They include the following types:

1. Monument-(Mon), Disk-(DK): A standard United States Coast and Geodetic Survey or New Jersey Geodetic Control Survey disk set in a concrete post, pavement, curb, ledge rock, etc., stamped with a reference number, and used for both horizontal and vertical control.

2. Point (Pt.): A State highway, tidelands (riparian), city, etc. survey marker represented by a chiseled cross, punch hole, brass plug, etc. used for horizontal and vertical control. These stations are not marked, but if there should be an enclosing box, the rim is stamped with a number.

3. Rivet-(Rv.): A standard metal rivet set by the New Jersey Geodetic Control Survey, used for vertical control.

4. Mark-(Mk.): Same as point, but used only for vertical control. In the description of such marks there should appear a mark number followed by an equality sign and then the original name or elevation of the bench mark, and in parentheses the name of the organization which established the mark.

(b) The disturbance of a geodetic control reference mark is discouraged. When a geodetic control reference mark must be moved, raised or lowered to accommodate construction, the New Jersey Geodetic Control Survey shall be contacted at least 60 days prior to disturbance, and arrangements shall be made to protect the position. If the position can not be protected, it may be altered in position after approval by the New Jersey Geodetic Control Survey and under the supervision of a licensed professional engineer or land surveyor using standard methods. Copies of field notes and instruments, tape, and rod specifications including calibration data, shall be submitted to the New Jersey Geodetic Control Survey.

(c) Rationale: See the OAL Note at the beginning of this subchapter.

SUBCHAPTER 4. GENERAL WATER AREAS

AGENCY NOTE: See Agency Note at the beginning of this Adoption Notice regarding corrections to N.J.A.C. 7:7E-4.2, Water Area Policy Summary Table to N.J.A.C. 7:7E-4.10, Man-made harbor and to N.J.A.C. 7:7E-4.11, Acceptability conditions for uses.

7:7E-4.2 Water Area Policy Summary Table

The Water Area Policy Summary Table (Figure 21) indicates the Location Policy for the introduction of various uses in each of the General Water Areas. This table is included for quick reference. For further details or conditions for acceptability of uses, see N.J.A.C. 7:7E-4.11.

WATER AREA POLICY SUMMARY TABLE FIGURE (21)

Note: Depths are mean depth of water

Use	Water Area Type	Ocean 18'+,0-18'		Open Bay 18'+,6-18',0-6'			Semi-Enclosed and Back Bay 6'+,0-6'		Tidal Guts	Large Rivers	Medium Rivers, Creeks & Streams	Lakes Ponds and Reservoirs	Man-Made Harbors
Aquaculture		E	E	E	E	E	E	E	E	E	E	E	E
Boat Ramps		/	C	/	C	C	C	C	C	C	C	C	C
Docks (cargo)		C	C	C	C	C	C	C	C	C	C	/	C
Docks (recreation)		C	C	C	C	C	C	C	C	C	C	C	C
Dredging (maintenance)		C	C	C	C	C	C	C	C	C	C	C	C
Dredging (new)		C	C	C	C	D	C	D	D	C	C	C	D
Dredge Material Disposal		C	C	C	C	D	C	D	C	C	P	*[C]**P*	P
Dumping		P	P	P	P	P	P	P	P	P	P	P	P
Filling		D	D	P	D	D	D	D	D	D	D	P	D
Piling		D	C	D	C	C	C	C	C	C	C	D	C
Mooring		C	C	C	C	C	C	C	C	C	C	C	C
Sand, Gravel Extraction		C	D	D	D	D	D	D	P	C	C	P	P
Bridges		/	/	D	D	D	D	D	C	C	C	P	P
Submerged Infrastructure		C	C	C	C	C	C	C	C	C	C	C	C
Overhead Lines		/	/	P	P	P	P	P	C	D	C	P	C
Dams and Impoundments		/	/	/	/	/	P	D	P	P	D	/	/
Outfalls and Intakes		C	C	C	C	C	C	C	C	C	C	C	C
Realignment		/	/	D	D	D	D	D	D	D	D	D	D
Miscellaneous		C	C	C	C	C	C	C	C	C	C	C	C

P=Prohibited
C=Conditionally Acceptable
D=Discouraged
/=Impractical
E=Encouraged
(See appropriate policy)

7:7E-4.7 Large rivers

(a) The "large river" channel type includes flowing waterways with watersheds greater than 1,000 square miles, which means the Delaware, Hudson, and Raritan Rivers.

1.-2. (No change.)

3. The Raritan River is a tidal river from a point approximately 1.1 miles upstream from the Landing Lane Bridge between Piscataway and Franklin townships to its mouth at Raritan Bay and the Arthur Kill.

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

7:7E-4.10 Man-made harbors

(a) Man-made harbors are semi-enclosed or protected water areas which have been developed for boat mooring or dockage. This general water area type includes Marinas (N.J.A.C. 7:7E-3.10), Ports (N.J.A.C. 7:7E-3.11), semi-enclosed water bodies created by man-made jetties or similar structures, fishing ports and harbors, and lagoons (see N.J.A.C. 7:7E-3.17).

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

7:7E-4.11 Acceptability conditions for uses

(a) Numerous developments or activities seeks locations in New Jersey's coastal waters. Some uses involve locations both above and below the mean high water line, in both Water and Water's Edge areas. This section defines the important uses of water areas managed by the Coastal Management Program and the conditions under which those uses are acceptable. Some projects involve combinations of uses, such as retaining structures, dredging, and filling. Other uses, such as Shore Protection uses, are defined elsewhere under Use Policies.

(b) Standards relevant to aquaculture are as follows:

1. (No change.)

2. Aquaculture is encouraged in all General Water Areas provided that:

i.-iii. (No change.)

3. Rationale: See the OAL Note at the beginning of this subchapter.

(c) Standards relevant to boat ramps are as follows:

1. (No change.)

2. The acceptability conditions for boat ramps are as follows:

i.-ii. (No change.)

3. Rationale: See the OAL Note at the beginning of this subchapter.

(d) Standards relevant to docks and piers (for cargo movement and commercial fisheries) are as follows:

1. "Docks and piers" (for cargo movement and commercial fisheries)" are structures supported on pilings driven into the bottom substrate or floating on the water surface, used for loading and unloading cargo, including fluids, connected to or associated with a single industrial or manufacturing facility

or to commerical fishing facilities. Rules for docks and piers intended for multiple uses may be found under Use Policies for Ports (N.J.A.C. 7:7E-7.9). Policies for docks composed of fill and retaining structures may be found under the category "filling" (see (i) below).

2. Docks and piers for cargo movement and commercial fisheries are conditionally acceptable in most General Water Areas, provided that:

i.-ii. (No change.)

3. Rationale: See the OAL Note at the beginning of this subchapter.

(e) Standards relevant to docks and piers (recreational) are as follows:

1. "Recreational and fishing docks and piers" are structures supported on pilings driven into the bottom substrate, or floating on the water surface, which are used for recreation or fishing or for the mooring or docking of boats which are used for recreation or fishing.

2. Docks and piers are conditionally acceptable in General Water Areas bodies provided that:

i.-ii. (No change.)

iii. The docks and piers are located so as to not hinder navigation or conflict with overhead transmission lines;

iv. There is minimum feasible interruption of natural water flow patterns;

v. Space between horizontal planking is maximized and width of horizontal planking is minimized to the maximum extent practicable;

vi. The width of the structure is minimized relative to height above the water, to the maximum extent practicable, especially where crossing above vegetated wetlands or submerged vegetation, and except under unusual circumstances the width does not exceed eight feet; and

vii. In lagoons the structure extends no more than 20 percent of the width of the lagoon from bank to bank.

3. Docks and piers on pilings or cantilevered or floating docks and piers shall be preferred to construction on fill. Repairs and maintenance of existing docks and piers are generally acceptable.

4. Rationale: See the OAL Note at the beginning of this subchapter.

(f) Standards relevant to maintenance dredging are as follows:

1. "Maintenance dredging" is the removal of accumulated sediment from previously authorized navigation channels, marinas, lagoons or boat moorings, for the purpose of maintaining an authorized water depth and width. Dredging beyond those authorized dimensions is "new dredging," (see N.J.A.C. 7:7E-4.11(f)).

2. Maintenance dredging is conditionally acceptable to the authorized depth, length and width in all existing navigation channels, access channels, anchorages and moorings within all General Water Areas to ensure that adequate water depth is available for safe navigation, provided that:

i. An acceptable spoil disposal site with sufficient capacity exists (see N.J.A.C. 7:7E-4.11(g) and 7:7E-7.12 for rules on dredged material disposal).

ii. A pre-dredging chemical analysis, bioaccumulation test, and bioassay of sediments is conducted by the applicant in sites where the Department suspects contamination of sediments. The results of these tests will be used to determine if hazardous substances may be resuspended at the dredging site and what methods may be needed to control their escape. The results will also be used to determine acceptability of dredged material disposal site.

iii. Turbidity concentrations (i.e. suspended sediments) and other water quality parameters at, downstream, and upstream of the dredging site, and slurry water overflows shall meet applicable State Surface Water Quality Standards in N.J.A.C. 7:9-4 and the Department may require the permittee to conduct biological, physical and chemical water quality monitoring before, during and after dredging and disposal operations to ensure that water quality standards will not be exceeded.

iv. If predicted water quality parameters are likely to exceed State Water Quality Standards, or if pre-dredging chemical analysis of sediments reveals significant contamination, then the Department will work cooperatively with the applicant to fashion acceptable control measures or, in the alternative, may impose seasonal restrictions under the specific circumstances identified below.

v. For maintenance dredging using mechanical dredges such as clamshell bucket, dragline, grab, orange peel, ladders, dipper or scouring, the feasibility of deploying silt curtains at the dredging site shall be examined. In sites with water currents above one knot, dredging using closed watertight buckets or lateral digging buckets will be examined. The Department may decide not to allow mechanical dredging or scouring of highly contaminated sites even if turbidity control measures were planned.

vi. If the applicant for mechanical maintenance dredging can not meet the acceptability conditions in (f) i through v above then the Department will authorize dredging on a seasonally restricted bases only, in waterways characterized by the following:

(1) Known spawning or nursery areas of the endangered shortnose sturgeon (N.J.A.C. 7:7E-3.37);

(2) Known spawning sites of anadromous fishes such as: Atlantic sturgeon; alewife; blueback herring; and striped bass;

(3) Waterbodies downstream of known anadromous fish spawning sites, as in N.J.A.C. 7:7E-3.9, where the predicted turbidity plume will encompass the entire cross-sectional area of the water body, thus forming a potential blockage to upstream migration;

(4) Areas of contaminated sediments with high levels of fecal coliform and/or streptocous bacteria, and/or hazardous substances adjacent to (upstream or downstream) State approved shellfishing waters and public or private bathing beaches;

(5) Areas within 1,000 meters or less of oyster beds as defined in N.J.A.C. 7:7E-3.2; or

(6) Known female blue crab winter hibernation areas. These typically are located in higher salinity water near bay mouths.

vii. For hydraulic dredges, if the applicant cannot meet the acceptability conditions in (f) i through v above, specific operational procedures, such as removal of cutter head, flushing of pipeline sections prior to disconnection, limitations on depth of successive cuts, etc. shall be examined. Seasonal dredging restrictions may be imposed in the following areas to prevent entrainment and mortality of aquatic organisms:

(1) Known female blue crab winter hibernation areas;

(2) Known spawning, nursery, or wintering areas of the endangered shortnose sturgeon as in N.J.A.C. 7:7E-3.37; or

(3) Known wintering areas of adult Atlantic or shortnose sturgeon, striped bass or white perch.

3. To mitigate adverse impacts upon Shellfish Beds (N.J.A.C. 7:7E-3.2), endangered or Threatened Wildlife or Vegetation Species Habitat (N.J.A.C. 7:7E-3.37), Finish Migratory Pathways (N.J.A.C. 7:7E-3.9), Marine Fish and Fisheries (N.J.A.C. 7:7E-8.2) and wintering areas for finfish or

blue crabs, and to prevent reduction of ambient dissolved oxygen below critical levels, or the increase of turbidity or the resuspension of toxic substances above critical levels, seasonal limitations may be imposed on maintenance dredging as specifically described in this subsection.

(g) The standards relevant to new dredging are as follows:

1. "New dredging" is the removal of sediment from the bottom of a water body that has not been previously dredged, for the purpose of increasing water depth, or the widening or deepening of navigable channels to a newly authorized depth or width.

2. Acceptability conditions relevant to new dredging are as follows:

i. New dredging is conditionally acceptable in all General Water Areas for boat moorings, navigation channels or anchorages (docks) provided that:

(1)-(2) (No change.)

(3) The adjacent water areas are currently used for recreational boating, commercial fishing or marine commerce;

(4) The dredge area causes no significant disturbance to Special Water or Water's Edge Areas *[other than intertidal and subtidal shallows, which must be mitigated in accordance with N.J.A.C. 7:7E-1.7]*;

(5) (No change.)

(6) Dredging will be accomplished consistent with all conditions described under Dredging—Maintenance (e)2i through vi, as appropriate to the dredging method;

(7) (No change.)

(8) (No change.)

(9) The dredged area is reduced to the minimum practical; and

(10) The maximum depth of the newly dredged area shall not exceed that of the connecting access or navigation channel necessary for vessel passage to bay or ocean.

ii. To mitigate adverse impacts Upon Shellfish Beds (N.J.A.C. 7:7E-3.2), Endangered or Threatened Wildlife or Vegetation Species Habitat (N.J.A.C. 7:7E-3.36), Finfish Migratory Pathways (N.J.A.C. 7:7E-3.5), Marine Fish and Fisheries (N.J.A.C. 7:7E-8.2), spawning or wintering areas for finfish, or female blue crab wintering areas, and to prevent reduction of ambient dissolved oxygen below critical levels, or the increase of turbidity or the resuspension of toxic substances above critical levels, seasonal and/or dimensional limitations may be imposed on new dredging.

iii. New dredging or excavation to create new lagoons for residential development is prohibited in wetlands and discouraged elsewhere.

iv. New dredging is conditionally acceptable to control siltation in lakes, ponds and reservoirs *, **provided that an acceptable sedimentation control plan is developed to address resedimentation of these water bodies***.

v. Rationale: See the OAL Note at the beginning of this subchapter.

(h) The standards relevant to dredged material disposal are as follows:

1. "Dredged material disposal" is the discharge of sediments (spoils) removed during dredging operations.

2. Acceptability conditions relevant to dredged material disposal are as follows:

i. Dredged material disposal is prohibited in tidal guts, man-modified harbors, and medium rivers, creeks and streams.

ii. Dredged material disposal is discouraged in open bays and semi-enclosed and back bays where the water depth is less than six feet.

iii. Disposal of dredged materials in the ocean and bays deeper than six feet is conditionally acceptable provided that it is in conformance with USEPA guidelines (40 CFR 230, *[40 FR 41291, September 5, 1975]* ***45 FR 85344, December 24, 1980***) established under Section 404(b) of the Clean Water Act.

iv. (No change.)

v. Overboard disposal (also known as aquatic, open water, side casting, subaqueous, or wet) of uncontaminated sediments into unconfined disposal sites is ***conditionally*** acceptable in existing anoxic dredge holes, provided that ***data on water quality, benthic productivity and seasonal finfish use evidence limited biological value and*** a submerged elbow or underwater diffuser is used. The hole shall not be filled higher than the depth of the surrounding waters.

vi. Overboard disposal of sediments less than 75 percent sand shall be acceptable in unconfined disposal sites when shallow waters preclude removal to an upland or confined site provided that: Shellfish beds (as defined in N.J.A.C. 7:7E-3.2) are not within 1,000 meters; disposal will not smother or cause condemnation of harvestable shellfish resources (as in N.J.A.C. 7:7E-3.2); and sediment characteristics of the spoil and disposal site are similar. If unconfined aquatic disposal cannot meet these conditions, then the Department shall impose a seasonal restriction appropriate to the resource of concern.

vii. Uncontaminated dredge sediments with 75 percent sand or greater are generally encouraged for beach nourishment on ocean or open bay shores.

viii. The use of uncontaminated dredged material to create new wetlands ***or islands*** in any General Water Area is conditionally acceptable depending upon an evaluation of the biological value of the wetlands gained compared with the biological value of the water area lost.

ix. *[Spoil]* ***Dredged material*** disposal in lakes, ponds and reservoirs is *[conditionally acceptable provided that the spoil is adequately contained.]* ***prohibited.*** *[Cross-reference: Conditions for dredge spoil disposal on land are indicated in N.J.A.C. 7:7E-7.12.]*

x. *[Spoil disposal on upland sites is preferred.]* Conditions for dredge spoil disposal on land are indicated in N.J.A.C. 7:7E-7.12.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(i) The Standards relevant to dumping (Solid waste or sludge) are as follows:

1.-2. (No change.)

3. Rationale: See the OAL Note at the beginning of this subchapter.

(j) The standards relevent to filling are as follows:

1. (No change.)

2. Acceptability conditions relevant to filling are as follows:

1. (No change.)

ii. In all other natural water areas, filling is discouraged, but limited filling may be considered for acceptability provided that:

(1)-(7) (No change.)

iii. Filling in a man-made lagoon is discouraged unless it complies with the conditions found under N.J.A.C. 7:7E-4.11(i)2ii or the following three conditions:

(1) In those areas of man-made lagoons where the Division of Coastal Resources has promulgated a limit of fill line, no fill or associated retaining structures shall be permitted seaward of that line. Compliance with the mitigation policy (N.J.A.C. 7:7E-1.7) shall not be required in such cases.

(2) In those areas where two existing lawful bulkheads are not more than 75 feet apart and no limit of fill line has been promulgated, the connecting bulkhead may not extend seaward of a straight line connecting the ends of the existing bulkheads. Compliance with the mitigation policy shall not be required in such cases.

(3) Elsewhere, the proposed retaining structure shall not extend seaward of the high water line.

3. In no event may regulated wetlands be filled except under the conditions of the Wetlands Special Area Policy (N.J.A.C. 7:7E-3.25).

4. Filling using clean sediment of suitable particle size and composition is acceptable for beach nourishment projects (see the Coastal Engineering Use Policies (N.J.A.C. 7:7E-7.11), and conditionally acceptable for the creation of new wetlands.

5. Standards relevant to the removal of unauthorized fill are as follows:

i. For filling which took place prior to September 26, 1980 (the effective date of the Rules on Coastal Resource and Development Policies, N.J.A.C. 7:7E), or prior to September 28, 1978 for areas within the coastal area defined at N.J.S.A. 13:19-4 (CAFRA), removal shall be required only if the fill has resulted in ongoing significant adverse environmental impacts, such as the blocking of an otherwise viable tidal wetland or waterbody, and its removal will alleviate the adverse impacts.

ii. For filling which took place subsequent to September 26, 1980 (or subsequent to September 28, 1978 for areas within the coastal area defined at N.J.S.A. 13:19-4), removal shall be required if it violates the acceptability conditions for filling in water areas set forth at N.J.S.A. 7:7E-4.11(i).

6. (No change.)

(k) Standards relevant to mooring are as follows:

1. (No change.)

2. Temporary or permanent boat mooring areas are conditionally acceptable in all General Water Areas provided that the mooring area is adequately marked and is not a hazard to navigation.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(l) Standards relevant to sand and gravel extraction are as follows:

1. (No change.)

2. Sand and gravel extraction is prohibited in lakes, ponds and reservoirs, man-made harbors and tidal guts ***unless the water body was created by the extraction process, in which case the use is conditionally acceptable.*** This activity is discouraged in all other General Water Areas except the deep ocean and rivers, creeks, and streams. In these General Water Area types, priority will be given to sand extraction for beach nourishment, and extraction is conditionally acceptable provided that:

i. (No change.)

ii. Turbidity and resuspension of toxic materials is controlled throughout the extraction operation consistent with the Department's Surface Water Quality Standards standards (N.J.A.C. 7:9-4);

iii. There is an acceptable disposal site for the waste from washing operations;

iv. In rivers, creeks and streams, the depth of water at the mining site is at least six feet ***MLW***;

v. The mining will not increase shoreline erosion; and

vi. The mining will not create anoxic water conditions.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(m) Standards relevant to bridges are as follows:

1. (No change.)

2. Bridges are conditionally acceptable over all water area types provided that:

i.-iv. (No change.)

3. (No change.)

(n) Standards relevant to submerged infrastructure are as follows:

1. "Submerged infrastructures" include the following:

i. (No change.)

ii. Pipelines are underwater pipes laid, buried, or trenched for the purpose of transmitting liquids or gas. Examples would be crude oil, natural gas, water, petroleum products or sewage pipelines. Construction of an underwater pipeline may involve trenching, temporary trench spoil storage, and back filling, or jetting as an alternative to trenching.

2. Submerged infrastructures are conditionally acceptable provided that they are not sited within Special Areas, unless no prudent and feasible alternate route exists.

i. In the case of pipelines, the following conditions shall also be met:

(1) Trenching takes place to a sufficient depth and is backfilled, either through natural or mechanical means to minimize the possibility of puncturing by snagging anchors or sea clam dredges;

(2)-(3) (No change.)

ii.-iii. (No change.)

3. (No change.)

(o) Standards relevant to overhead transmission lines are as follows:

1. (No change.)

2. Overhead transmission lines are prohibited or discouraged, except over rivers, streams, creeks, and tidal guts, where transmission lines will be considered for acceptability provided that:

i.-v. (No change.)

3. (No change.)

(p) Standards relevant to dams and impoundments are as follows:

1. (No change.)

2. Dams and impoundments are impractical in many water body types, prohibited in other water body types, and discouraged in specified water body types (see Figure 21), unless essential for water supply purposes or the creation of special wildlife habitats.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(q) Standards relevant to outfalls and intakes are as follows:

1. (No change.)

2. Outfalls and intakes are conditionally acceptable in most water bodies provided that the use associated with the intake or outfall meets the Coastal Resource and Development Policies. In particular, stormwater discharge pipes shall comply with the Runoff Policy (N.J.A.C. 7:7E-8.7) and provide appropriate filtration methods. The Water Areas policy applies only to the location of the mouth of the pipes, not to the effluent or the amount of diversion.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(r) Standards relevant to realignment of water areas are as follows:

1. (No change.)

2. Realignment of naturally occurring, unaltered water areas is discouraged.

3. (No change in text.)

4. Rationale: See the OAL Note at the beginning of this subchapter.

(s) Standards relating to miscellaneous uses are as follows:

1. (No change.)

2. Water dependent uses of Water Areas not identified in the Water Acceptability Table or addressed in the Use Policies will be analyzed on a case-by-case basis to ensure that adverse impacts are minimized. Non-water dependent uses are discouraged in all water areas.

SUBCHAPTER 5. GENERAL LAND AREAS

7:7E-5.1 Definitions

(a) "General land areas" include all mainland land features located upland of special water's edge areas. These land area policies apply in all general land areas, including those land areas that are also Special Areas, where both the General Land Area and Special Area Policies must be complied with.

(b) (No change.)

7:7E-5.2 (No change.)

7:7E-5.3 Coastal growth rating

(a) The coastal zone is classified into 13 different regions on the basis of the varied pattern of existing coastal development and natural and cultural resources. For the region, the Department uses three broad regional growth strategies:

1. The Development Region is already largely developed. From a coastwide perspective, development in this region would be infill development. In accordance with the coastal policy on concentration of development, development in this region is preferred over development in other regions, other factors being equal. Infill, extension and some scattered development is acceptable here. Development in these regions, however, must be consistent with Recreation and Public Access Policies.

2. The Extension Region is the region where development should be channeled after full development of the Development Region. Generally, infill and some extension of development is acceptable here.

3. The Limited Growth Region contains large environmentally sensitive areas. Generally, only infill development is acceptable here, with the exception of development which meets the requirements of the Large-Scale Residential Development Policy (N.J.A.C. 7:7E-7.2(i)).

(b) The Barrier Island Region is composed of oceanfront *[and back bay]* islands and spits ***and is designated an Extension Region***. *[The Land Areas Policy does not apply to the Barrier Island Region, which is composed entirely of various Special Areas. For purposes of applying the Water's Edge Housing Use Policy (N.J.A.C. 7:7E-7.2(b)) oceanfront islands shall be considered an Extension Region.]*

(c) The Urban Area Region consists of all Special Urban Areas (see N.J.A.C. 7:7E-3.41). This region is a Development Region.

1.-11. (No change.)

(d) The North Shore Region includes those portions of Monmouth and Middlesex Counties that are within the coastal zone and is designated a Development Region.

(e) The Central Shore Region includes those protions of Ocean County within the coastal zone that are north of State Highway 37 and west of the Garden State Parkway, and those parts of the county north of Cedar Creek and east of the Parkway, and is designated a Development Region.

(f) The Western Ocean County Region includes those portions of Ocean County west of the Garden State Parkway and south of State Highway 37, and is designated an Extension Region.

(g) The Barnegat Corridor Region includes those portions of Ocean County south of Cedar Creek and north of State Highway 72, and is designated an Extension Region.

(h) The Mullica-Southern Ocean Region includes those portions of Ocean County south of State Highway 72 except for the Tuckerton Region, all of Bass River Township, Burlington County, and those portions of Atlantic County north of County Road 561 (Jimmy Leeds Road), located within the coastal zone, and is designated a Limited Growth Region.

(i) The Tuckerton Region is bounded on the west by the Burlington-Ocean County border, on the north by U.S. Highway 9, Otis Bog Road, Nugentown Road and the Tuckerton Borough Line, and on the south and east by Little Egg Harbor, Big Thorofare, Big Creek, Great Bay and the Mullica River. The Tuckerton Region is designated an Extension Region.

(j) The Absecon-Somers Point Region includes those mainland portions of Atlantic County south of County Road 561 (Jimmy Leeds Road), and east of Garden State Parkway, and is designated a Development Region.

(k) The Great Egg Harbor River Region includes those portions of Atlantic County southwest of County Road Alternate 559 and those portions of Cape May County east of State Highway 50, north of County Road 585, and west of U.S. Highway 9, and is designated a Limited Growth Region.

(l) The Southern Region is composed of all of Cape May County, within the coastal zone, except for that portion in the Great Egg Harbor River Basin and Barrier Island Region, and is designated an Extension Region.

(m) The Delaware Bayshore Region is composed of all of Cumberland County and Salem County subject to CAFRA and is designated a Limited Growth Region, with the exception of the City of Bridgeton which is designated a Development Region.

(n) The Delaware River Region is composed of the area north of the CAFRA regulated area to the coastal zone boundary in Trenton and is designated a Development Region, except for land designated as a Low Growth Area by the State Development Guide Plan Concept Map. Such land is along Oldmans Creek eastward of Route I-295, and along Rancocas Creek and its tributaries in Medford and Southampton Townships, and is designated for Limited Growth.

(o) The Northern Waterfront Region is composed of the entire coastal zone from Cheesequake Creek in Middlesex County to the New York State boundary and is designated a Development Region.

7:7E-5.4 Environmental Sensitivity rating

(a) Environmental Sensitivity is a composite indication of the general suitability of a land area for development based on vegetation and soils. These factors are combined to indicate High, Moderate, or Low Environmental Sensitivity on a site or parts of a site. This section first defines these rankings and then defines the two factors.

(b) High Environmental Sensitivity Areas are land areas with the following characteristics:

1. (No change.)

2. Wet or high permeability moist soil adjacent to a stream channel (permanent or ephemeral), as defined in (e)2 below.

(c) Moderate Environmental Sensitivity Areas are neither High nor Low Environmental Sensitivity Areas.

(d) Low Environmental Sensitivity Areas are areas with depth to seasonal high water greater than five feet and one of the following characteristics:

1. (No change.)

2. Areas with bare earth or herbaceous vegetation or early successional meadow with Agricultural Capability Class V-VIII Soils, except soils suitable for blueberry and cranberry production.

(e) Definitions of Environmental Sensitivity Factors are as follows:

1. (No change.)

2. "Wet or high permeability moist soils" are soils with a depth to seasonal high water table less than, or equal to, three feet, unless the soils are loamy sand or coarser in which case they are soils with a depth to seasonal high water table less than, or equal to, *[five]* ***four*** feet.

(f) (No change.)

AGENCY NOTE: See Agency Note at the beginning of this Adoption Notice regarding corrections to N.J.A.C. 7:7E-5.5, Development potential.

7:7E-5.5 Development potential

(a) Development Potential has three levels—High, Medium and Low—depending upon the presence or absence of certain development-oriented elements at or near the site of the proposed development, as defined in (b) through (e) below. The Development Potential rating applies to the entire land area portion of the site. Different sets of Development Potential criteria are also defined in (b) through (e) below for different categories of development. Also, some of the criteria vary depending upon the regional type. If a specific set of Development Potential criteria is not defined for a particular category or type of development, then the acceptable intensity of development policy (N.J.A.C. 7:7E-5.6) is not applicable to that type of development.

(b) The standards relating to Residential Development Potential are as follows:

1. (No change.)

2. High Potential sites meet all of the following criteria:

i. Direct access from the site to an existing paved public road with sufficient capacity to absorb satisfactorily the traffic likely to be generated by the proposed development.

(1) (No change.)

ii. Direct access to a wastewater treatment system, including collector sewers and treatment plant, with adequate capacity to treat the sewage from the proposed development, or soils suitable for on-site sewage disposal system that will meet applicable ground and surface water quality standards.

iii. A majority of the perimeter of the site, excluding wetlands *[or]*, surface water areas ***or land areas abutting limited access transportation corridors (for example, Garden State Parkway, Atlantic City Expressway)***, is adjacent to or across a public road or railroad from land that is developed, or a majority of the land within 1,000 feet of the site, is developed. Developed land, for infill purposes for determination of high, medium, or low potential, means:

(1)-(5) (No change.)

(6) Public park areas developed for active recreational use; and

(7) (No change.)

3.-5. (No change.)

(c) The standards relevant to Major Commercial and Industrial Development Potential are as follows:

1.-4. (No change.)

(d) The standards relevant to Campground Development Potential are as follows:

1. A campground development provides facilities for visitors to enjoy the natural resources of the coast. Typically, this type of development seeks sites somewhat isolated from other development and with access to water, beach, forest and other natural amenities.

2.-4. (No change.)

(e) Development Potential Rankings for energy facilities shall be jointly determined by NJDEP and NJDOE on a case by case basis.

(f) (No change.)

7:7E-5.6 to 7:7E-5.7 (No change.)

SUBCHAPTER 6. GENERAL LOCATION POLICIES

7:7E-6.1 to 7:7E-6.2 (No change.)

7:7E-6.3 Secondary impacts

(a) "Secondary impacts" are the effects of additional development likely to be constructed as a result of the approval of a particular proposal. Secondary impacts can also include traffic increases, increased recreational demand and any other offsite impacts generated by onsite activities which affect the *[site and]* surrounding region.

(b) Coastal development that induces further development shall demonstrate, to the maximum extent practicable, that the secondary impacts of the development will satisfy the Coastal Resource and Development Policies. The level of detail and areas of emphasis of the secondary impact analysis are expected to vary depending upon the type of development. Minor projects may not even require such an analysis. Transportation and wastewater treatment systems are the principal types of development that require a secondary impact analysis, but major industrial, energy, commercial, residential, and other projects may also require a rigorous secondary impact analysis.

1.-2. (No change.)

(c) (No change.)

SUBCHAPTER 7. USE POLICIES

7:7E-7.1 (No change.)

AGENCY NOTE: See Agency Note at the beginning of this Adoption Notice regarding corrections to N.J.A.C. 7:7E-7.2, 7.6 and 7.7.

7:7E-7.2 Housing use policies

(a) (No change.)

(b) Standards relevant to water area and water's edge housing are as follows:

1. New housing is prohibited in Water Areas, except for reconstruction of existing structures on pilings located on guts, canals, lagoons and ports which have been damaged by causes other than wind, water or wave, which is conditionally acceptable.

2. In special urban areas and along large rivers where water dependent uses are *[deemed]* ***demonstrated to be*** infeasible, new housing is also acceptable on structurally sound existing pilings or where piers have been removed as part of the harbor clean up program, the equivalent pier area may be replaced in the same or another location.

i. Structurally sound existing pilings may be reconfigured provided that the total area of water coverage is not increased and fisheries resources are not adversely impacted.

ii. Expansion of the total area of water coverage is discouraged, except where it can be shown that extensions are functionally necessary for water dependent uses.

***iii. New housing acceptable under this policy shall be consistent with the Public Access Resource Policy (7:7E-8.13), including provision of fishing access, as appropriate*.**

3. Housing is conditionally acceptable in the filled water's edge, provided that it meets the requirements of the Filled Water's Edge Policy (N.J.A.C. 7:7E-3.16) and the Public Access Policy (N.J.A.C. 7:7E-8.13). The acceptable intensity of residential development shall be determined by applying the criteria of the General Land Area Policy (N.J.A.C. 7:7E-5) except on bay islands where the requirements of the Island Corridor Policy (N.J.A.C. 7:7E-3.24) shall apply.

4. New housing involving the stabilization of existing lagoons through revegetation, bulkheading or other means is conditionally acceptable provided that the conditions of the existing lagoon edges policy and the Filling Policy (N.J.A.C. 7:7E-4.11(i)) are satisfied.

5. (No change in text.)

(c) Standards relevant to floating homes are as follows:

1. A "floating home" is any waterborne structure designed *[or]* ***and*** intended primarily as a permanent or seasonal dwelling, not for use as a recreational vessel, which will remain stationary for more than 30 days.

2. Floating homes are prohibited in the Coastal Zone. * **Those floating homes registered with the New Jersey Department of Motor Vehicles prior to June 1, 1984 are not subject to this paragraph.***

3. Rationale: See the OAL Note at the beginning of this subchapter.

(d) Standards relevant to cluster development are as follows:

1. Housing developments are encouraged to cluster dwelling units on the areas of sites most suitable for development. "Clustering" is defined as an increase of net density realized by reducing the size of private lots and retaining or increasing the gross density of a project.

2. (No change.)

(e) Standards relevant to residential mix are as follows:

1. Housing development that provides for a mix of dwelling types and for persons of different age and income groups is encouraged.

2. (No change.)

(f) Standards relevant to affordable housing are as follows:

1. Definitions:

i. "Affordable" means housing with monthly carrying costs which are no greater than 30 percent of a household's gross monthly income for rental housing, and no greater than 28 percent of a household's gross monthly income for housing offered for sale.

ii. (No change.)

iii. "Low income household" means a household which has an income that is 50 percent or less of regional median household income adjusted for household size as determined by the United States Department of Housing and Urban Development.

iv. "Moderate income household" means a household which has an income which is between 50 and 80 percent of the regional median household income adjusted for household size as determined by the United States Department of Housing and Urban Development.

v. "Income" means all forms of *[taxable income that must be reported to the United States Internal Revenue Service.]* ***income as determined by HUD regulations governing Section 8 eligibility.***

vi. "Monthly carrying costs" consist of mortgage payments, real estate tax, insurance, and condominium association fees for housing offered for sale; and consist of rent payments for housing offered for rent *[. Utilities and other shelter expenses are not included in this definition.]* ***inclusive of utilities. This definition also includes any other mandatory costs imposed by law, contract, or by oral or written agreement with the landlord, homeowner association or other similar group.***

vii. *["Region" means the county in which the housing is proposed to be located. The data to be used to describe the region is standard Metropolitan Statistical Area (SMSA) data published annually by the United States Department of Housing and Urban Development, and available from the HUD area offices in Newark and Camden.]* ***"Area" means a Primary Metropolitan Statistical Area (PMSA) according to data published annually by the United States Department of Housing and Urban Development and available from HUD regional offices in Camden and Newark.***

2. The Affordable Housing Policy shall apply to all coastal developments of 100 units or more which are not located in the Urban Areas Region, the Delaware River Region or the Northern Waterfront Region (see N.J.A.C. 7:7E-5.3).

3. A project located in the Urban Areas Region may be required to provide an appropriate amount of low and moderate income housing if a determination is made that the proposed project will result in the displacement of low and moderate income households or the proposed project will use public funds for the development of housing.

4. Proposed developments subject to this policy shall provide at least 10 percent of the units to be built at prices affordable by low income households and at least 10 percent of the units at prices affordable by moderate income households.

[5. The number of bedrooms in the affordable housing units shall be appropriate to the size of the families needing affordable housing in the region, and shall be proportionate to the number of bedrooms per unit mix in the market units.]

*[6.]***5.*** Agreements approved by the Division shall ensure that the sale, resale and rental of affordable housing is limited to households eligible for low and moderate income housing, and that the units remain affordable for a period of at least 30 years. In evaluating an applicant's proposal to meet the policy, the Division will recognize that if the price of the market units is close to the acceptable price for the moderate income units, restrictions concerning resale may make the units unmarketable ***and will therefore not be required***.

*[7.]***6.*** The Affordable Housing standards shall be met by either of the following two methods:

i. Construction of the affordable units on site; or

ii. Construction or rehabilitation of the affordable units offsite but within the municipality in which the project is located or at a location agreed to by the Division of Coastal Resources as a special case. ***A special case location outside of the project municipality is acceptable when the construction or rehabilitation meet a need for affordable housing in the area.***

*[8.]***7.*** If it can be demonstrated that compliance with the affordable housing policy cannot be achieved by on or offsite development of housing, or that the objectives of the policy could be better fulfilled in another way, the requirement may also be met by the following method:

i. A contribution which is dedicated to a specific project to be conducted by *[the State, county improvement authority or local housing authority]* ***an appropriate State, county,**

municipal, or non-profit agency, entity, authority or organization* to be used for the construction or rehabilitation of housing units elsewhere in the subject municipality or at a location agreed to by the Division of Coastal Resources as a special case ***as specified in N.J.A.C. 7:7E-7.2(f)6 ii***. A plan and time schedule showing how affordable housing will be provided with these funds must also be produced prior to the issuance of a CAFRA permit.

ii. The appropriate contribution shall be based upon the number of units built and the selling or rental prices of the units. The following formula shall be used to determine the contribution:

The contribution shall equal (2 percent of average unit price) x (total number of units in the project)

[9. Construction of the affordable units shall commence prior to occupancy of the structure receiving a CAFRA permit.]

8. Prior to the start of housing construction the developer shall obtain approval by the Division of Coastal Resources of a schedule for the establishment of the required number of affordable units in a project receiving a CAFRA permit. The schedule must indicate that the construction of the affordable units will be completed prior to full construction of the market units.

[10. In determining the obligation under this policy the recent affordable income housing activities of the developer in the region where the housing is proposed shall be considered.]

*[11.]***9.*** If the municipality in which the proposed residential development is to be located has received a judgment of compliance with the Mount Laurel II decision for its affordable housing zoning ordinance ***or plan*** by a New Jersey Supreme Court appointed Mount Laurel judge *[, and the proposed development complies with the ordinance, this affordable housing policy shall not apply.]* ***or the State Council on Affordable Housing and the zoning plan provides for an adequate amount of affordable housing in the CAFRA approvable area as determined by the Division of Coastal Resources, this affordable housing policy shall not apply.***

[12. If the proposed residential development is located outside of the area(a) identified and zoned by the subject municipality for the construction of low and moderate income housing and the zoning ordinance is approved by the Division of Coastal Resources, this affordable housing policy shall not apply.]

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

(g) The standards relevant to housing and transportation are as follows:

1.-4. (No change.)

(h) Standards relevant to housing rehabilitation are as follows:

1. Residential development involving the demolition and redevelopment of existing structures is discouraged, unless rehabilitation of the existing structures is demonstrated to be impractical, infeasible, or contrary to the public interest.

2. (No change.)

(i) Standards relevant to large-scale multi-use development are as follows:

1. "Large-scale multi-use developments" are free standing, planned developments, such as planned unit developments, which combine at least 500 residential dwelling units with commercial, industrial, recreational, or other uses.

2. Large-scale multi-use developments are conditionally acceptable, provided that they carry out the basic coastal policy to concentrate the regional pattern of development, contribute to regional housing needs, do not cause significant adverse secondary impacts, and will not induce growth outside the site boundary which is inconsistent with coastal policies.

3. Large-scale multi-use developments need not meet the Land Area Policies, except in the high and moderate environmental sensitivity portions of Limited Growth Regions, where only the roads and sewage criteria will be used in determining if the Development Potential is High, Medium or Low (See N.J.A.C. 7:7E-5.5(b)). Large-scale *[Residential]* ***multi-use*** development in Limited Growth Regions must, however, incorporate a buffer along the perimeter of the site of sufficient size to preclude scattered *[infill]* ***peripheral*** development *[, i.e., generally in excess of 1000 feet]*.

4. (No change.)

7:7E-7.3 "Resort/recreational use"

(a) "Resort/recreation uses" include the wide range of small and large developments attracted to and often dependent upon locations along the coast. These uses include hotels, motels, marinas, boating facilities, campgrounds, amusement piers, parks and recreational structures such as bathhouses, natural areas, open space for active and passive recreation, and linear paths for bicycling and jogging (see N.J.A.C. 7:7E-7.10 and N.J.A.C. 7:7E-5.5(d)).

(b) Standards relevant to recreation priority are as follows:

1. Each waterfront municipality should contain at least one waterfront park on each body of water within the municipality. Municipalities that do not currently provide, or have active plans to provide, access to the water will not be eligible for Green Acres or Shore Protection Bond Funding.

2. Resort/recreation uses and commercial fisheries uses shall have priority over all other uses in Monmouth, Ocean, Atlantic, and Cape May counties with highest priority reserved for those uses that serve a greater rather than a lesser number of people, and those uses that provide facilities for people of all ages and for people with physical handicaps.

3. (No change.)

(c) Standards relevant to recreation areas within developments are as follows:

1. "Recreation areas" include a variety of types and sizes of open space adequate to accommodate appropriate recreational activities or facilities.

2. Appropriate recreation areas shall be incorporated in the design of all residential, industrial and commercial development to the maximum extent practicable, ***as necessary*** to ensure that ***needed*** on-site recreation opportunities will not be precluded by a lack of suitable open space. The "maximum extent practicable" will be determined based on guidelines of the Green Acres Program (N.J.S.A. 13:8A-1 et seq.) which consider the recreation resource supply and demand, the natural characteristics of the site, and the ability to identify a public agency or other organization willing to manage, maintain and develop the open space as a recreational resource. ***What is necessary will be determined by consideration of recreation resource supply and demand and municipal and county open space and recreation master plans.***

3. (No change.)

(d) Standards relevant to marinas are as follows:

1. New or expanded marinas for recreational boating are conditionally acceptable if:

i. (No change.)

ii. (No change.)

2. New marinas or boat launching facilities that provide primarily for sail, oar or rental boating are encouraged.

3. Expansions of existing marinas shall be encouraged by limiting non-water dependent land uses that preclude support facilities for boating.

[3.] ***4.*** (No change.)

[4.] ***5.*** (No change.)

[5.] ***6.*** New marinas are prohibited on wetlands unless the wetlands area lost to marina development is minimal and is compensated for by the creation or restoration of wetlands elsewhere, consistent with the Mitigation Policy (N.J.A.C. *[7:7E-1.7]* ***7:7E-1.6***).

[6.] ***7.*** New marinas are encouraged to locate on filled water's edge sites, where minimal dredging is required.

[7.] ***8.*** (No change.)

(e) Standards relevant to amusement piers, parks and boardwalks are as follows:

1. New amusement piers are prohibited, except in areas with privately held riparian grants, where they are discouraged. Expanded or extended amusement piers, parks, and boardwalks at the water's edge or in the water, and the on-site improvement or repair of existing amusement piers, parks and boardwalk areas are discouraged unless the proposed development meets the following conditions:

i.-iii. (No change.)

2. (No change.)

7:7E-7.4 Energy use policies

(a) (No change)

(b) Standards relevant to general energy facility siting procedure are as follows:

1. The acceptability of all proposed new or expanded coastal energy facilities shall be determined by a review process that includes both the Department and the New Jersey Department of Energy (NJDOE) (N.J.S.A. 52:27F-1 et seq.) according to the procedures defined in the Memorandum of Understanding between the Department and NJDOE on Coordination of Permit Reviews.

2. NJDOE will determine the need for future coastal energy facilities according to three basic standards. NJDOE will submit an Energy Report to the Department with its determination of the need for a coastal energy facility based on three required findings:

i.-iii. (No change.)

3. The Department will determine the acceptability of coastal energy facilities using the Coastal Resource and Development Policies supported by appropriate, technically sound analyses of alternatives.

4. If NJDOE has submitted an Energy Report to the Department, the Department decision document shall refer to the NJDOE Energy Report and indicate the Department's reasons for differences, if any, between the Department's decision and the NJDOE Energy Report.

5. Where NJDOE and the Department disagree on the acceptability of a specific proposed coastal energy facility (for example, on a specific proposed site for one type of energy facility), the disputed decision shall, in accord with State law, be submitted to the State's Energy Facility Review Board for final administrative action.

6. (No change in text.)

(c) Coastal energy facilities construction and operation shall not directly or indirectly result in net loss of employment in the State for any single year.

1. Coastal energy facility construction and operation which results in loss of 200 or more person-years of employment in jobs in New Jersey directly or indirectly related to the State's coastal tourism industry in any single year is prohibited.

2. Rationale: See the OAL Note at the beginning of this subchapter.

(d) Standards relevant to Outer Continental Shelf (OCS) oil and gas exploration and development are as follows:

1. Rapid exploration of the Mid-Atlantic, North Atlantic, and other offshore areas with potential reserves of oil and natural gas is encouraged, as long as no long term adverse impacts will result, onshore or offshore and such activities are conducted in accordance with the policies of the program. Onshore activities related to the exploration, development and production of offshore hydrocarbons shall be carried out according to the specific energy facility rules of this section.

2. (No change.)

(e) Standards relevant to onshore support bases are as follows:

1. New or expanded onshore support bases and marine terminals to support offshore oil and gas exploration, development, and production (including facilities for work boats, crew boats and helicopters, pipelaying barges, pipeline jet barges, ocean-going tugs, anchor handling vessels, and limited, short-term storage facilities) are encouraged at locations in built-up urban coastal areas and discouraged in less developed areas of the coastal zone.

i.-ii. (No change.)

2. (No change.)

(f) Standards relevant to platform fabrication yards and module construction are as follows:

1. Platform fabrication yards and module construction are encouraged in built-up coastal areas of the coastal zone, along the Hudson, Raritan and Delaware Rivers which have the requisite acreage, adequate industrial infrastructure, ready access to the open sea, and adequate water depth, and where the operation of such a yard would not alter existing recreational uses of the ocean and waterways in the areas. They are discouraged elsewhere in the coastal zone.

2. (No change.)

(g) Standards relevant to repair and maintenance facilites are as follows:

1. Repair and maintenance facilities for vessels and equipment for offshore activities are encouraged in the Delaware River and Northern Waterfront Areas. Repairs can be accommodated on an emergency basis in existing ship repair facilities in the Atlantic Ocean and Delaware Bay area, but not on a continual, long-term basis.

2. (No change.)

(h) Standards relevant to pipe coating yards are as follows:

1. Pipe coating yards are discouraged along the Atlantic Ocean and Delaware Bay and encouraged along the Delaware River and in the port area under the jurisdiction of the Port Authority of New York and New Jersey.

2. (No change.)

(i) Standards relevant to pipelines and associated facilities are as follows:

1. Crude oil and natural gas pipelines to bring hydrocarbons from offshore New Jersey's coast to existing refineries, and oil and gas transmission and distribution systems and other new oil and natural gas pipelines are conditionally acceptable, subject to the following conditions and restrictions:

i-vi. (No change.)

vii. Pipelines shall be buried to a depth sufficient to minimize exposure by scouring, shipgroundings, anchors, fishing and clamming and other potential obstacles on the sea floor. Trenching operations shall be conducted in accordance with applicable Federal regulations.

2. (No change.)

(j) Standards relevant to gas separation and dehydration facilities are as follows:

1. (No change.)

2. Separation and dehydration facilities are discouraged in the Bay and Ocean Shore area. Such facilities that are approved shall meet all applicable air and water quality standards, and be protected by adequate visual, sound, and vegetative buffers. Separation and dehydration facilities will be reviewed as part of the overall proposed gas transportation system by the Department and NJDOE.

3. (No change.)

(k) Standards relevant to gas compressor stations are as follows:

1. (No change.)

2. Compressor stations are encouraged to be located out of the sight of the shoreline on platforms in offshore waters. They are discouraged from locations in the Bay and Ocean Shore area.

3. (No change.)

(l) Standards relevant to gas pigging facility are as follows:

1. (No change.)

2. A pigging facility, which may or may not be associated with a separation and dehydration facility, is discouraged in the Bay and Ocean Shore area. The need for and location of the facility will be reviewed within the context of the entire natural gas pipeline system.

3. (No change.)

(m) Standards relevant to gas processing plants are as follows:

1. (No change.)

2. Gas processing plants proposed for locations between the offshore pipeline landfall and interstate natural gas transmission lines shall be prohibited from sites within the Bay and Ocean Shore area and shall be located the maximum distance from the shoreline. The siting of gas processing plants will be reviewed in terms of the total pipeline routing system by the Department and NJDOE.

3. (No change.)

(n) Standards relevant to other gas-related facilities are as follows:

1. Additional facilities related to a natural gas pipeline such as metering and regulating stations, odorization plants, and block valves are conditionally acceptable in the Bay and Ocean Shore area provided they are protected by adequate visual, sound, and vegetative buffer areas; are approved by the Department and NJDOE; and are in compliance with United States Department of Transportation regulation.

2. (No change.)

(o) Standards relevant to oil refineries and petrochemical facilities are as follows:

1. New oil refineries and petrochemical facilities are conditionally acceptable outside of the Bay and Ocean Shore area provided that: they are consistent with all applicable Location and Resource Policies; there is a need for the facility as determined by NJDOE; and an Environmental Impact Statement determines that the facility will have no unacceptable impacts.

i.-iii. (No change.)

2. (No change.)

(p) Standards relevant to storage of crude oil, gases and other potentially hazardous liquid substances are as follows:

1. The storage of crude oil, gases and other potentially hazardous liquid substances as defined in N.J.A.C. 7:1E-1.1 under the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.) is prohibited on barrier islands and discouraged elsewhere in the Delaware and Raritan Bay and Atlantic Ocean Shore region.

i.-iii. (No change.)

2. (No change.)

(q) Standards relevant to tanker terminals are as follows:

1. New or expanded tanker facilities will be acceptable only in existing ports and harbors where the required channel depths exist to accommodate tankers.

i.-iii. (No change.)

2. (No change.)

(r) Standards relevant to electric generating stations are as follows:

1. New or expanded electric generating facilities (for base load, cycling, or peaking purposes) and related facilities are conditionally acceptable subject to the conditions that follow. Conversion or modification of existing generating facilities for purposes of fuel efficiency, cost reduction, or national interest are conditionally acceptable provided they meet applicable State and Federal laws and standards.

i.-vi. (No change.)

2. (No change.)

(s) Standards relevant to liquefied natural gas (LNG) facilities are as follows:

1. New marine terminals and associated facilities that receive, store, and vaporize liquefied natural gas for transmission by pipeline to a base-load electric generating station are discouraged in the coastal zone unless a clear and precise justification for such facilities exists in the national interest; the proposed facility is located and constructed so as to neither unduly endanger human life and property, nor otherwise impair the public health, safety and welfare, as required by N.J.S.A. 13:19-10f; and such facilities comply with the Coastal Resource and Development Policies.

i.-iii. (No change.)

7:7E-7.5 Transportation use policies

(a) Standards relevant to roads are as follows:

1. New road construction must be consistent with the Policy on Location of Linear Development and shall be limited to situations where:

i.-ii. (No change.)

iii. Provision is made to include, where appropriate, catwalks and parking access to nearby waterbodies.

[iii.] ***iv.*** (No change in text.)

[iv.] ***v.*** (No change in text.)

[v.] ***vi.*** (No change in text.)

2. (No change.)

(b) Standards relevant to public transportation are as follows:

1. New and improved needed public transportation facilities, including bus, rail, air, boat travel, people mover systems and related parking facilities, are encouraged.

2. Existing rail right-of-ways may not be converted to other uses, unless the Department determines that the route is not critical for public transportation or public access reasons.

3. (No change.)

AGENCY NOTE: Due to a printer's error proposed amendments to N.J.A.C. 7:7E-7.5(c) and (d) were set forth at N.J.A.C. 7:7E-7.7 (see 17 N.J.R. 1493)

(c) Standards relevant to bicycle and foot paths are as follows:

1. (No change.)

2. Linear bicycle and foot paths are encouraged along the edges of all water bodies, and from the water body to the nearest public road, provided they would not disturb Special Areas or subject the user to danger.

3. Existing bicycle and foot paths shall be continued around development when it is not practical to pass through development.

4. (No change.)

(d) Standards relevant to parking facilities are as follows:

1. Parking facility standards apply to all parking facilities, in part or wholly within the area subject to the Waterfront Development Act (N.J.S.A. 12:5-1 et seq.), and ***, elsewhere in the coastal zone,*** to parking facilities for 300 or more cars and related access or ***to*** paving of an area of equal to or greater than three acres excluding access drives***.*** ***[**elsewhere in the coastal zone.]*

2. Parking lots, garages and large paved areas are conditionally acceptable, provided that they will not interfere with existing or planned mass transit services, the extent of paved surfaces is minimized, landscaping with indigenous or preferred species is maximized; the development satisfies the Resource Policies for air, water, and runoff; and the development is compatible with its surroundings and satisfies the Location Policies.

3. (No change.)

7:7E-7.6 Public facility use policies

(a) (No change.)

(b) Standards relevant to general public facilities are as follows:

1. Upgrading existing facilities to meet development and redevelopment needs in developed waterfront areas is encouraged. New or expanded public facility development is conditionally acceptable provided that:

i.-iii. (No change.)

2. (No change.)

(c) Standards relevant to solid waste facilities are as follows:

1. (No change.)

2. Sanitary landfills that are located in the upland shall demonstrate that the leachate will not adversely impact the ground or surface waters by using an impervious liner and/or leachate collection, treatment and disposal system. Acceptable plans for restoring the site must be submitted with the original proposal.

3. Sanitary landfills are prohibited in Wetlands.

(d) Standards relevant to wastewater treatment facilities are as follows:

1.-5. (No change.)

7:7E-7.7 Industry use policies

(a) (No change.)

(b) Industry is encouraged in special urban areas and conditionally acceptable elsewhere, provided it is compatible with all applicable Location and Resource Policies. Particular attention should be given to Location Policies which reserve the water's edge for water-dependent uses (N.J.A.C. 7:7E-3.17 through 3.31); to Resource Policy N.J.A.C. 7:7E-8.15, which requires that the use be compatible with existing uses in the area, or adequate buffering to be provided; and to Resource Policy N.J.A.C. 7:7E-8.13, which places public access requirements upon the use.

(c) New industrial development is encouraged to locate at or adjacent to existing industrial sites, to the maximum extent practicable.

(d)-(g) (No change.)

7:7E-7.8 Mining use policies

(a) New or expanded mining operations on land, and directly related development, for the extraction and/or processing of construction sand, industrial sand, gravel, ilmenite, glauconite, and other minerals are conditionally acceptable, provided that the following conditions are met (mining is otherwise exempted from the General Land Areas policy, but shall comply with the Special Areas, and General Water Area Policies: N.J.A.C. 7:7E-5, 7:7E-3, 7:7E-4).

1.-5. (No change.)

6. The mining operations control and minimize to the maximum extent practicable adverse impacts from noise and dust, surface and groundwater pollution, and disposal of spoils and waste materials and conform to all applicable Federal, State, and local regulations and standards;

7. The mineral extraction will not have a substantial or longlasting adverse impact on coastal resources, including local economies, after the initial adverse impact of removal of vegetation, habitat, and soils, and not including the long-term irretrievable impact of use of the non-renewable mineral resource; and

8. The mine development and reclamation plan minimizes the area and time of disruption of agricultural operations and provides for storage and restoration of all Agricultural Class I, II, and III soils, so that there will be no net loss in the area covered by these soils. ***The placement of soils may be acceptable to an alternate location if a need is demonstrated, there is no net loss in the area covered by these soils and the placement is consistent with all other coastal policies.****

(b) (No change.)

7:7E-7.9 Port Use Policies

(a) (No change.)

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

7:7E-7.10 Commercial facility use policies

(a) Standards relevant to hotels and motels are as follows:

1. (No change.)

2. (No change in text.)

3. Hotels, motels or restaurants may be water oriented if they take full advantage of a waterfront location.

4. In special urban areas, new hotel, motel, or restaurant development is acceptable in the filled water's edge and over large rivers on structurally sound existing pilings, provided it is consistent with policies on filled water's edge (N.J.A.C. 7:7E-3.16) and Special Urban Areas (N.J.A.C. 7:7E-3.41), and the existing total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.

5. (No change in text.)

(b) Standards relevant to casino hotels are as follows:

1. (No change.)

2. Hotel-casino development in Atlantic City shall be located in the city's traditional resort area (along the Boardwalk), and in the State Marina area to the maximum extent practicable.

i.-iv. (No change.)

(c) Standards relevant to retail trade and services are as follows:

1. (No change.)

2. In special urban areas, new or expanded retail trade and service establishments are conditionally acceptable in filled water's edge areas and over large rivers on structurally sound existing pilings as part of mixed use developments, provided that the development is consistent with policies on filled

water's edge (N.J.A.C. 7:7E-3.16) and Special Urban Areas (N.J.A.C. 7:7E-3.41), and the existing total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.

3. Elsewhere in the coastal zone, new or expanded retail trade and service establishments are conditionally acceptable provided that the development:

i. Complies with all acceptable Location and Resources Policies;

ii. Is compatible in scale, site design, and architecture with surrounding development; and

iii. Where appropriate, utilizes the water area as the central focus of the development.

4. (No change in text.)

(d) Standards relevant to convention centers and arenas are as follows:

1. (No change.)

2. New convention centers and arenas are encouraged in special urban areas, and conditionally acceptable in Development regions, provided that the development is compatible in scale, site design, and architecture with surrounding development, and is accessible by public transportation. New convention centers and arenas are discouraged in Barrier Island, Extension and Limited Growth regions.

3. (No change.)

7:7E-7.11 Coastal engineering

(a) (No change.)

(b) Standards relevant to shore protection priorities are as follows:

1. Non-structural solutions to shoreline erosion problems are preferred over structural solutions. Vegetative shore protection measures have been proven effective, and are preferred at shoreline sites in which they are feasible. Feasibility is dependent on the following factors: shoreline geometry; shoreline slope; sediment type; boat traffic; and wind and extent of exposed land/water surface (fetch). The infeasibility and impracticability of a non-structural solution must be demonstrated before structural solutions may be deemed acceptable.

2. (No change.)

(c) Standards relevant to dune management are as follows:

1. Dune restoration and maintenance projects as a non-structural shore protection measure, including sand fencing, revegetation, additions of non-toxic appropriately sized material, control of pedestrian and vehicular traffic, are encouraged.

2. (No change.)

(d) Standards relevant to beach nourishment are as follows:

1. Beach nourishment projects, such as non-structural shore protection measure, are encouraged, provided that:

i.-iii. (No change.)

2. (No change.)

(e) Standards relevant to structural shore protection are as follows:

1. (No change.)

i. The structure is essential to protect water dependent uses or heavily used public recreation beach areas in danger from tidal waters or erosion, or the structure is essential to protect existing structures and infrastructure in developed shorefront areas in danger from erosion *[, or the structure is essential to mitigate, through, for example, the construction of a retained earthen bern, the projected erosion in an Erosion Hazard Area along a headland and provide erosion protection for a development that is otherwise acceptable under Coastal Resource and Development Policies]*.

ii.-v. (No change.)

vi. If the proposed project requires filling of a Water Area it must also be consistent with the General Water Area Policy for filling (N.J.A.C. 7:7E-4.11(i)) and all other relevant coastal policies; and

vii. (No change.)

2. (No change.)

3. Stone rip-rap and sloped concrete revetments which allow for the growth of vegetation are the preferred form of retaining structures.

4. Public access, including parking where appropriate, must be provided to publicly funded shore protection structures and to waterfront land created by public projects, unless public access would create a safety hazard to users. Physical barriers or local regulations which unreasonably interfere with access to, along or across a structure are prohibited.

5. (No change.)

7:7E-7.12 Dredge Spoil Disposal on Land

(a) "Dredge spoil disposal" is the discharge of sediments, known as spoils, removed during dredging operations. The following policies govern Land and Water's Edge disposal only. The policies regulating dredge spoil disposal in Water areas are found in N.J.A.C. 7:7E-4.11.

(b) Dredge spoil disposal is conditionally acceptable under the following conditions: sediments are covered with appropriate clean material that is similar in texture to surrounding soils; and the sediments will not pollute the groundwater table by seepage, degrade surface water quality, present an objectionable odor in the vicinity of the disposal area, or degrade the landscape.

1.-4. (No change.)

5. Dredge spoil disposal in wet and dry borrow pits is conditionally acceptable (see N.J.A.C. 7:7E-3.15, 7:7E-3.25 and 7:7E-3.29).

6. If pre-dredging sediment analysis indicates contamination, then special precautions shall be imposed, including but not necessarily limited to increasing retention time of water in disposal site or rehandling basin through weir and dike design modifications, use of coagulants, ground water monitoring, or measures to prevent biological uptake by colonizing plants.

7. Dewatering releases from confined (diked) disposal sites and rehandling basins shall meet existing State Water Quality Standards (N.J.A.C. 7:9-4 and 7:9-6).

(c) (No change.)

7:7E-7.13 National defense facilities use policy

(a) (No change.)

(b) National Defense facilities are conditionally acceptable, and will be approved if one of two findings can be made:

1. (No change.)

2. The proposed facility is coastally dependent, will be constructed and operated with maximum possible consistency with Coastal Resource and Development Policies, and will result in minimal feasible degradation of the natural environment.

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

7:7E-7.14 High rise structures

(a) All high rise structures more than six stories or more than 60 feet from ***existing pre-construction ground level*** *[grade high],* are encouraged to locate in an area of existing

high density, high-rise and/or intense settlements. High rise housing and structures are acceptable subject to the following conditions:

1. High-rise structures within the view of coastal waters must be separated from coastal waters by at least one public road or an equivalent area (at least *[34]* ***50*** feet) physically and visually open to the public;

2. The longest lateral dimension of any high-rise structure must be oriented perpendicular to the beach or coastal waters;

3. The proposed structure must not block the view of dunes, beaches, horizons, skylines, rivers, inlets, bays, or oceans that are currently enjoyed from existing residential structures, public roads or pathways, to the maximum extent practicable;

4. The structure must not overshadow the dry sand beach between 10 A.M. and 4 P.M. between June 1 and September 20, and must not overshadow waterfront parks year round;

5. The proposed structure must be in character with the surrounding transitional heights and residential densities, or be in character with a municipal comprehensive development scheme requiring an increase in height and density which is consistent with all applicable Coastal Resource and Development Policies; and

6. The proposed structure must not have an adverse impact on air quality, traffic, and existing infrastructure.

7. The proposed structure must be architecturally designed so as to not cause deflation of the beach and dune system or other coastal environment waterward of the structure.

(b) Rationale: See the OAL Note at the beginning of this subchapter.

SUBCHAPTER 8. RESOURCE POLICIES

7:7E-8.1 Purpose

(a) The third step in the screening process of the Coastal Resource and Development Policies involves a review of a proposed development in terms of its effects on various resources of the built and natural environment of the coastal zone, both at the proposed site as well as in its surrounding region. These policies serve as standards to which proposed development must adhere.

(b) In addition to the standards addressed in this subchapter, proposed development must also adhere to applicable site development standards administered by other State and local agencies. These include but are not limited to standards adopted by local soil conservation districts or municipalities pursuant to the Soil and Sediment Control Act (N.J.S.A. 4:24-39 et seq.) *[as well as barrier free design standards promulgated by the Department of Treasury, Division of Building and Construction pursuant to N.J.S.A. 52:32-1 and 52:32-5 and the Department of Transportation pursuant to N.J.S.A. 52:32-14 et seq.]* ***and*** Barrier Free Design requirements promulgated by the New Jersey Department of Community Affairs pursuant to N.J.S.A. 52:32.1 et seq. and N.J.S.A. 52:27D-123 and N.J.A.C. 5:23-3.2 and 5:23-3.14.

7:7E-8.2 Marine fish and fisheries

(a) Coastal actions are conditionally acceptable to the extent that minimal feasible interference is caused to the natural functioning of marine fish and fisheries, including the reproductive and migratory patterns of estuarine and marine estuarine-dependent species of finfish and shellfish.

(b) (No change.)

7:7E-8.3 Shellfisheries

(a) (No change.)

(b)-(e) (No change.)

7:7E-8.4 Water quality

(a) As required by Section 307(f) of the Federal Coastal Zone Management Act (P.L. 92-583), Federal, State and local water quality requirements established under the Clean Water Act (33 U.S.C. §1251) shall be the water resource standards of the coastal management program. These requirements include not only the minimum requirements imposed under the Clean Water Act but also the additional requirements adopted by states, localities, and interstate agencies pursuant to Section 510 of the Clean Water Act and such statutes as the New Jersey Water Pollution Control Act. In the Delaware River Basin, the requirements include the prevailing "Basin Regulations-Water Quality" adopted by the Delaware River Basin Commission as part of its Comprehensive Plan. In the waters under the jurisdiction of the Interstate Sanitation Commission in the New Jersey-New York metropolitan area, the requirements include the Interstate Sanitation Commission's Water Quality Regulations. Department rules related to water pollution control and applicable throughout the entire coastal zone include, for example, the Surface Water Quality Standards (N.J.A.C. 7:9-4), the rules concerning *[Treatment of Waste Water Discharged Into Surface Waters of the State]* ***Wastewater Discharge Requirements*** (N.J.A.C. 7:9-5), the Ground-Water Quality Standards (N.J.A.C. 7:9-6), and the Regulations Concerning the New Jersey Pollutant Discharge Elimination System (N.J.A.C. 7:14A).

(b) Coastal development which would violate the Federal Clean Water Act, or State laws, rules and regulations enacted or promulgated pursuant thereto, is prohibited. In accordance with N.J.A.C. 7:15 concerning the Water Quality Management Planning and Implementation process, coastal development that is consistent with an approved Water Quality Management (208) Plan under the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., is prohibited.

(c) (No change.)

7:7E-8.5 Surface water use

(a) (No change.)

(b) Coastal development shall demonstrate that the anticipated surface water demand of the facility will not exceed the capacity, including phased planned increases, of the local potable water supply system or reserve capacity, and that construction of the facility will not cause unacceptable surface water disturbances, such as drawdown, bottom scour, or alteration of flow patterns.

1.-2. (No change.)

(c) (No change.)

7:7E-8.6 Groundwater use

(a) (No change.)

(b) Coastal development shall demonstrate, to the maximum extent practicable, that the anticipated groundwater withdrawal demand of the development, alone and in conjunction with other groundwater diversions proposed or existing in the region, will not cause salinity intrusions into the groundwaters of the zone, will not degrade groundwater quality, will not significantly lower the water table or piezometric surface, or significantly decrease the base flow of adjacent water sources. Groundwater withdrawals shall not exceed the aquifer's safe yield.

1. (No change.)

2. Coastal development shall conform with all applicable DEP and, in the Delaware River Basin, Delaware River Basin Commission requirements for groundwater withdrawal and water diversion rights.

(c) (No change.)

AGENCY NOTE: See Agency Note at the beginning of this Adoption Notice regarding corrections to N.J.A.C. 7:7E-8.7, 8.16 and 8.17.

7:7E-8.7 Stormwater runoff

(a) "Stormwater runoff" is flow on the surface of the ground, resulting from precipitation.

(b) (No change.)

1.-2. (No change.)

(c) Standards relevant to flood and erosion control are as follows:

1. The flood and erosion control standard for detention requires 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-year, 10-year, and 100-year storm considered individually. These design storms shall be defined as either a 24-hour storm using the rainfall distribution recommended by the United States Soil Conservation Service when using United States Soil Conservation Service procedures (such as United States Soil Conservation Service, "Urban Hydrology for Small Watersheds," Technical Release No. 55), or as the estimated maximum rainfall for the estimated time of concentration of runoff at the site when using a design method such as the Modified Rational Method. For purposes of computing runoff, all lands in the site shall be assumed, prior to development, to be in good condition (of 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.

(d) Standards relevant to water quality control are as follows:

1. The water quality requirement for detention will require prolonged retention of a small design storm which shall be either a one year frequency 24-hour storm using the rainfall distribution recommended for New Jersey by the United States Soil Conservation Service or a storm of 1¼ inches of rainfall in two hours. Provisions shall be made for the water to be retained and released so as to evacuate 90 percent in approximately 18 hours in the case of residential developments and 36 hours in the case of other developments. This is usually accomplished by a small outlet at the lowest level of detention storage, with a large outlet or outlets above the level sufficient to control the small design storm. If this requirement would result in a pipe smaller than three inches in diameter, the period of retention shall be waived so that three inches will be the minimum pipe size used.

2. Where soils have sufficient permeability, the production of zero runoff from the site under conditions of the 1¼ inch water quality storm will be considered sufficient to meet the water quality requirement for residential developments, provided that the seasonal high groundwater does not rise to within two feet of the bottom of the detention basin. For other than residential developments, approvals will be on a case-by-case basis after technical review. The object of this review will be to avoid pollution of groundwater.

(e) Standards relevant to detention ponds and swales are as follows:

1. Groundwater infiltration areas such as detention ponds or swales shall be sited as far horizontally from surface water and as far vertically from groundwater as is practicable.

i. Infiltration areas are discouraged in soils with a seasonal high water table between 1½ and three feet. Limited infiltration swales may be acceptable on a case by case basis provided that:

(1) Swales in these areas are not the principal infiltration areas and only serve to recharge runoff generated within the areas of soils with seasonal high water tables between 1½ and three feet;

(2) Maximum swale slopes are two percent;

(3) Time of concentration is maximized by maximizing the length of the swale; and

(4) Swales are planted with native woody species at suffucient densities to delay surface water flow and promote evapotranspiration.

ii. Infiltration areas, detention and retention basins, or any other techniques of delaying runoff are prohibited in soils with a seasonal high water table of 1½ feet or less, and in riverine floodplains.

(f) Standards relevant to alternatives to detention basins are as follows:

1. It is not necessary that basic requirements for water quantity and quality control be satisfied by means of detention basins. Measuring including, but not limited to rooftop storage, tanks, infiltration pits, porous pavement, dry wells, gravel layers underneath paving, or sheet flow through vegetated areas may be used for the purpose, with appropriate consideration for length of life and feasibility of continued maintenance in accordance with technical guidance from the Department. Vacuum street sweeping may be substituted for the water quality requirement where it can be shown to the satisfaction of the Department that continuity of the service will be assured, and where the pollution in question originates on the pavement.

2. Non-structural management practices, including but not limited to, cluster land use development, open space acquisition, stream encroachment and flood hazard controls, protection of wetlands, steep slopes and vegetation should be coordinated with detention requirements. Changes in land use can often reduce the scope and cost of detention provisions required by means of appropriate changes in runoff coefficients.

(g) Standards relevant to maintenance and repair are as follows:

1. Maintenance of detention basins and infiltration areas, or of other alternatives, is a very important aspect of a storm water management program. Control measures shall be designed to provide for mechanical maintenance operations. Responsibility for operation and maintenance of storm water management facilities including periodic removal and disposal of accumulated particulate material and debris, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner. In the case of developments where lots are to be sold, permanent arrangements, satisfactory to the approving agency shall be made to insure continued performance of these obligations.

(h) Standards relevant to stormwater point source discharges are as follows:

1. Stormwater point source discharges shall not flow into sanitary sewer systems.

(i) (No change.)

7:7E-8.8 Vegetation

(a) (No change.)

(b) Coastal development shall preserve, to the maximum extent practicable, existing vegetation within a development site. Coastal development shall plant new vegetation, particularly appropriate native coastal species, to the maximum extent practicable.

(c) (No change.)

7:7E-8.9 Important wildlife habitat

(a) "Important wildlife habitats" are areas of general importance to the maintenance of a range of wildlife species, providing high primary productivity, good mixes of habitat types, surface water, cover, or movement corridors. These areas are not as critical as "critical wildlife habitats". If they were depleted the effect on wildlife population would not be as catastrophic as the loss of a critical habitat, but serious depletions of wildlife population would occur. Until maps which identify these areas are available, sites will be considered for importance on a case by case basis by the Division of Fish, Game and Wildlife.

(b) Coastal development which does not incorporate management techniques which minimize disturbance to important wildlife habitats, on and offsite, is discouraged.

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

7:7E-8.10 Air quality

(a) The protection of air resources refers to the protection from air contaminants that injure human health, welfare or property, and to attainment and maintenance of State and Federal air quality goals and the prevention of degradation of current levels of air quality.

(b) Coastal development shall conform to all applicable State and Federal regulations, standards and guidelines and be consistent with the strategies of New Jersey's State Implementation Plan (SIP). See N.J.A.C. 7:27-2 through *[18]* ***19*** and New Jersey SIP for ***ozone,*** particulate matter, sulfur dioxide, nitrogen dioxide, carbon monoxide *[and]* lead ***and visibility*.**

(c) (No change.)

7:7E-8.11 Public access to the waterfront

(a) "Public access to the waterfront" is the ability of all members of the community at large to pass physically and visually to, from and along the ocean shore and other waterfronts.

(b) Coastal development adjacent to all coastal waters, including both natural and developed waterfront areas, shall provide perpendicular and linear access to the waterfront to the maximum extent practicable, including both visual and physical access. Development that limits public access and the diversity of waterfront experiences is discouraged.

1. All development adjacent to water shall, to the maximum extent practicable, provide, within its site boundary, a linear waterfront strip accessible to the public. If there is a linear waterfront accessway on either side of the site and it is not feasible to continue it within the boundaries of the site, a pathway around the site connecting to the adjacent parts, or potential parts of the waterfront path system in adjacent parcels shall be provided.

2. Municipalities that do not currently provide, or have active plans to provide, access to the water will not be eligible for Green Acres or Shore Protection Bond funding.

3. Public access shall be clearly marked, provide parking where appropriate, be designed to encourage the public to take advantage of the waterfront setting, and shall be barrier free where practicable.

4. A fee for access to, including parking where appropriate, or use of publicly owned waterfront facilities shall be no greater than that which is required to operate and maintain the facility and shall not discriminate between residents and non-residents except that municipalities may set a fee schedule that charges up to twice as much to non-residents for use of marinas and boat launching facilities for which local funds provide 50 percent or more of the costs.

5. *[No]* ***All*** establishment***s*,** including marinas and beach clubs, which control*[s]* access to tidal waters shall *[discriminate among patrons on the basis of race, religion, residence, ethnic background, sex, or sexual preference.]* ***comply with the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.*

6. Public access, including parking where appropriate, shall be provided to publicly funded shore protection structures and to waterfronts created by public projects unless such access would create a safety hazard to the user. Physical barriers or local regulations which unreasonably interfere with access to, along or across a structure are prohibited.

7. Development along the Hudson River shall conform with the Hudson River Walkway and Design Guidelines, a report prepared by Wallace, Roberts and Todd for NJDEP, 1983 and which may be obtained from the Department's Division of Coastal Resources, New Jersey Department of Environmental Protection, CN 401, Trenton, New Jersey 08625.

***8. Development adjacent to coastal waters shall provide fishing access within the provision of public access wherever feasible and warranted.**

9. Development adjacent to coastal waters shall provide barrier free access within the provisions of public access wherever feasible and warranted by the characteristics of the access area.*

(c) (No change.)

7:7E-8.12 Scenic resources and design

(a) "Scenic resources" include the views of the natural and/or built landscape.

(b) "Large-scale elements of building and site design" are defined as the elements that compose the developed landscape such as size, geometry, massing, height and bulk of structures.

(c) New coastal development that is visually compatible with its surroundings in terms of building and site design, and enhances scenic resources is encouraged. New coastal development that is not visually compatible with existing scenic resources in terms of large-scale elements of building and site design is discouraged.

(d) (No change.)

7:7E-8.13 Buffers and compatibility of uses

(a) (No change.)

(b) Development shall be compatible with adjacent land and water uses to the maximum extent practicable.

1.-2. (No change.)

(c) (No change.)

7:7E-8.14 Solid waste

(a) (No change.)

(b) Coastal development shall recover material and energy from solid waste, to the maximum extent practicable, as required by the New Jersey Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) and the Federal Resource Conservation and Recovery Act 42 U.S.C. 6901 et seq. If resource and

energy recovery are infeasible, solid waste shall be handled and disposed of in a manner consistent with the standards of the Division of Waste Management.

(c) Residential developments of over 99 units and all commercial and industrial developments which generate identifiable recyclable waste products, shall develop and implement a source separation and recycling plan to include collection methods and schedules, unless it can be demonstrated that such plans are not feasible. Demonstration of planned participation in an existing municipal or county recycling program is required for single family detached developments and shall meet the above requirement for other developments.

(d) (No change.)

7:7E-8.15 Energy conservation

(a) "Energy conservation" is the use of construction and siting techniques which minimize the amount of non-renewable energy used by a facility and maximize the productivity of the energy that is used.

(b) Coastal development shall incorporate energy conservation techniques and alternative sources of energy, including passive and active solar and wind turbines, to the maximum extent practicable.

1. For all high rise construction (as defined at N.J.A.C. 7:7E-7.2(h)) and for commercial and industrial construction costing $1,000,000 or more, the technical and economic feasibility of employing such measures shall be evaluated in an energy audit prepared by the applicant. An accompanying plan shall specify the energy conservation techniques and alternative sources of energy to be utilized as well as anticipated energy requirements for space heating, cooling, ventilation and lighting, industrial processes and other uses.

2. New buildings shall be situated and designed so that they do not block solar access to existing solar collectors more than 20 percent of the period of time from 9 A.M. to 3 P.M. between December 21 and February 2.

3. Paragraphs (b) 1 and 2 above shall not apply in municipalities which have energy conservation ordinances consistent with New Jersey Department of Energy standards.

(c) (No change.)

7:7E-8.16 Traffic

(a) "Traffic" is the movement of vehicles, pedestrians or ships along a route.

(b) Coastal development shall be designed and located in a manner so as to cause the least possible disturbance to traffic systems.

(c) When traffic systems are disturbed by approved development, the necessary design modifications shall be prepared and implemented in conjunction with the coastal development, and in a manner which is satisfactory to the New Jersey Department of Transportation.

(d) Development which will generate traffic in excess of capacity Level D is discouraged. A developer may by incorporating design modifications or by contributing to the cost of traffic improvements be able to address traffic problems resulting from the development, in which case development would be conditionally acceptable. Determinations of traffic levels which will be generated will be made by the New Jersey Department of Transportation.

(e) (No change.)

7:7E-8.17 Wet soils and high permeability moist soils

(a) "Wet soils and high permeability moist soils" are soils with a depth to seasonal high water table less than, or equal to, three feet, unless the soils are loamy sand or coarser, in which case they are soils with a depth to seasonal high water table less than, or equal to, *[five]* ***four*** feet.

(b) Development shall avoid portions of a site which consist of wet or high permeability moist soils, to the maximum extent practicable. Where construction is permitted on wet or high permeability moist soils, the following conditions shall apply:

1.-6. (No change.)

7. The lowering of the water table by pumping that would disturb adapted vegetation is prohibited;

8. Detention basins, swales and other runoff retention and groundwater recharge areas are discouraged in soils with a seasonal high water table between 1½ feet and three feet, although limited swales may be acceptable on a case-by-case basis (see N.J.A.C. 7:7E-8.7). Runoff retention and groundwater recharge areas are prohibited in soils with a seasonal high water table of 1½ or less;

9. Placement of fill is limited to areas where structures or pavement will be placed; and

10. The development is designed, to the maximum practicable, to concentrate development on portions of the site where the soils are least permeable (fine soils) and where depth to seasonal high water table is greatest.

7:7E-8.18 Fertile soils

(a) (No change.)

(b) Location policies restrict development in farmland conservation areas. Elsewhere, coastal development shall avoid disturbing fertile soils, to the maximum extent practicable, and shall carefully remove, stockpile and reuse the topsoil when on-site fertile soils cannot be preserved.

(c) (No change.)

7:7E-8.19 Flood prone areas

(a) "Flood prone areas" include both delineated flood hazard areas and areas flooded by non-delineated streams. Flood hazard areas around rivers, creeks and streams are being delineated by the Department under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.), and by the Federal Emergency Management Agency (FEMA). The Flood Hazard Area Control Act mandates the Department to "delineate as flood hazard areas, areas as in the judgment of the Department, the improper development and use of which would constitute a threat to the safety, health and general welfare from flooding" (N.J.S.A. 58:16A-52). The Act also regulates "the area which would be inundated by the 100 year design flood of any non-delineated stream". Where flood hazard areas have been delineated by both the Department and FEMA, the Department delineations shall be used.

1. Flood hazard areas around water bodies other than rivers, creeks and streams are delineated by FEMA. Where flood hazard areas have been delineated by neither FEMA nor DEP, the 10-foot contour line shall be used as the inland boundary of the flood hazard area. The seaward boundary shall be the mean high water line.

2. "Floodway" is defined as "the channel of natural stream and portions of the flood hazard area adjoining the channel, which are reasonably required to carry and discharge the flood water for flood flow of any natural stream" (N.J.S.A. 58:16A-51). Floodways are being delineated by the Department (see Figure 28).

3. (No change.)
(b) (No change in text.)
(c) Development in areas subject to fluvial flooding shall conform with the Flood Hazard Area Control Act and rules adopted thereunder, at N.J.A.C. 7:13.
(d) In flood hazard areas subject to tidal flooding, the following standards shall apply:
1. Residential development, including hotels and motels, is prohibited in areas designated as Coastal High Hazard Areas (V zones) on Federal Flood Insurance Rate Maps. ***Commercial development which is not related to beach use and tourism is discouraged in the Coastal High Hazard Area.***
2. All permanent structures shall be set back a minimum of 50 feet from oceanfront shore *[parallel]* ***protection*** structures, including bulkheads, revetments and seawalls ***, but excluding jetties and groins*.**
3. Construction acceptable in other flood hazard areas subject to tidal flooding shall conform with applicable Federal flood hazard reduction standards as found at 44 CFR 60 ***and in the Uniform Construction Code, N.J.S.A. 52:27D-1 et seq.).***
(e) In river areas designated as components of the New Jersey Wild and Scenic Rivers System, land uses are regulated or prohibited in accordance with N.J.A.C. 7:38-1.1 et seq. including special regulations adopted for a particular river, or sections thereof, upon designation of the system.
(f) (No change.)

7:7E-8.20 Noise abatement
(a) (No change.)
(b) Noise levels shall conform with the standards established in N.J.A.C. 7:29-1 and administered by the Office of Noise Control in the Division of Environmental Quality.
(c) (No change.)

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Fish and Game Council
General Trapping; Prohibition of Steel-Jaw Leghold Traps

Adopted Amendment: N.J.A.C. 7:25-5.12

Proposed: November 18, 1985 at 17 N.J.R. 2714(b).
Adopted: January 6, 1986 by Anthony E. DiGiovanni, Chairman, Fish and Game Council.
Filed: January 13, 1986 as R.1986 d.24, **without change.**

Authority: N.J.S.A. 23:4-22.6.

Effective Date: February 3, 1986.
Expiration Date pursuant to Executive Order No. 66(1978): July 31, 1986.
DEP Docket No. 063-85-10

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

7:25-5.12 General trapping
(a)-(d) (No change.)
Redesignate (e)-(j) as (f)-(k) (No change in text.)
(e) Steel-jaw leghold type trap:
1. Effective October 27, 1985, and thereafter, no person in this State shall:
i. Manufacture, sell, offer for sale, possess, import or transport an animal trap of the steel-jaw leghold type;
ii. Take or attempt to take any animal by means of a trap of the steel-jaw leghold type; or
iii. Use a steel-jaw leghold type trap.
2. The possession of a trap of the steel-jaw leghold type shall be prima facie evidence of a violation of these regulations except under the conditions prescribed by N.J.S.A. 23:4-22.5 which are:
i. The use of steel-jaw leghold traps for the purpose of exhibition by humane or educational institutions or organizations; or
ii. The possession of such traps by a person in the act of turning over the traps to a law enforcement agency.

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Amendment to the Lower Delaware Water Quality Management Plan

Public Notice

Take notice that on November 7, 1985 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Lower Delaware Water Quality Management Plan to construct a new 50,000 gallons per day sewage treatment plant to serve the Village of Canton, was adopted by the Department. The delineation of the sewer service area was based on existing zoning adjusted for environmentally constrained features.

HEALTH

(b)

OCCUPATIONAL AND ENVIRONMENTAL HEALTH SERVICES

Worker and Community Right to Know Act

Public Hearing

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 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:

Thursday, March 6, 1986
9:30 A.M. to 8:00 P.M.
New Jersey State Library
First Floor Meeting Room
185 West State Street
Trenton, New Jersey

The purpose of the hearing will be to receive public comments about problems employers and employees are having concerning compliance with the Right to Know law, and about 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 workplace hazardous substance list and the environmental hazardous substance list. Any suggested revisions to either list should be based on and accompanied by documented scientific evidence.

The Right to Know Advisory Council, in particular, would like the public to address the following issues: the need for certification of Right to Know education and training programs provided by consultants, the need for certification of technically qualified persons who will provide Right to Know training, the advisability and legality of the Department of Health copyrighting Hazardous Substance Fact Sheets, and the ability of workers and community residents to obtain the information they are entitled to under the Right to Know Law.

Persons who wish to testify should call (609) 984-2202. The record will be kept open for 15 days beyond March 6 for the receipt of written comments.

TREASURY-GENERAL

(c)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection

Notice of Assignments: January 3, 1986

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, prequalified New Jersey consulting firms. For information on DBC's prequalification and assignment procedures, call (609) 984-6979.

Last list dated December 17, 1985.

The following assignments have been made:

DBC. No.	PROJECT	A/E	CCE
H852	Roof Repairs—K100 Wing Kean College of New Jersey Union, NJ	Vincent E. Paolicelli	$40,000
P489	Structural Repairs/Renovations Somers Mansion Somers Point Atlantic County	Lammey & Giorgio, PA	$17,100
Y001	Facility Consultant Department of Transportation	Colm Engineering, PA	$30,000 Services
Y002	Facility Consultant Department of Transportation	London, Kantor, Umland Associates	$8,444 Services

This list completes A/E Assignments for the month of December, 1985. The Notice of Assignments, A/E Selection, will now be on a calendar month basis to coincide with monthly reports required by GSA.

(a)

ARCHITECT/ENGINEER SELECTION BOARD

1986 Miscellaneous Assignment Panels

Public Notice

Take notice that the Architect/Engineer Selection Board hereby announces the selection of the 1986 Miscellaneous Assignment Panels.

The following lists contain the names of the firms that were selected to provide consulting services for small projects throughout the upcoming calendar year.

ELECTRICAL/MECHANICAL ENGINEERING PANEL

Firm Name	Office Location
NORTH DISTRICT	
Barrett Associates, Inc.	Glen Rock
Louis Berger & Associates, Inc.	East Orange
Brownworth, Mosher & Doran	Piscataway
K. Feinberg Associates, Inc.	Englewood
Frank R. Holtaway & Son, Inc.	North Plainfield
A.D. Jilajian & Associates	Hackensack
Won Kim, PE	Hillside
O'Connor, Jeffrey & Kallaur	Union
Technical Associates, Inc.	Union
Turek Associates	Wayne
CENTRAL DISTRICT	
Amin Engineering	Somerville
M. Benton & Associates	Princeton
Maitra Associates, Inc.	Somerville
John C. Morris Associates, Inc.	Atlantic Highlands
Edward A. Sears Associates	Trenton
H.V. Weeks, Inc.	Bridgewater
SOUTH DISTRICT	
Borda Engineers	Merchantville
Colm Engineering, PA	Cherry Hill
Edward A. Moy, Inc.	Woodbury
Pennoni Associates, Inc.	Absecon
Roy Larry Schlien & Associates	Collingswood
Stone & Webster Engineering Corporation	Cherry Hill

ARCHITECTURAL PANEL

Firm Name	Office Location
NORTH DISTRICT	
Pedro E. Campos, AIA	Newark
Leslie M. Dennis & Son	Elizabeth
Kruger-Kruger-Albenberg	West Orange
L.J. Mineo, Jr., AIA	Emerson
Mylan Architectural Group	Montclair
Paulsen Associates	Jersey City
Dalim Sibdial Sau, AIA	Plainfield
CENTRAL DISTRICT	
Richard M. Horowitz, AIA	Trenton
Lovrek Associates, PC	Princeton
Vincent E. Paolicelli & Associates	Washington
Matthew L. Rue, AIA	Lambertville
Joseph N. Wirth & Associates	Trenton
SOUTH DISTRICT	
Cooper Partnership	Ventnor
Bernard DeAnnuntis & Associates	Pleasantville
Kolbe & Poponi	Cherry Hill
Lammey & Giorgio, PA	Haddonfield
Oliver & Becica, AIA, PA	Cherry Hill

CIVIL/SANITARY ENGINEERING

Firm Name	Office Location
NORTH DISTRICT	
Bernard R. Berson & Associates, Inc.	Fords
H. Thomas Carr, PE	Perth Amboy
Sidney M. Johnson & Associates	Union
Keller & Kirkpatrick	Florham Park
Tighe-Firtion-Carrino & Associates, Inc.	Secaucus
CENTRAL DISTRICT	
Applied Wastewater Technology, Inc.	Skillman
Maitra Associates, Inc.	Somerville
Thomas Myler Moore Associates, Inc.	West Trenton
Trenton Engineering Co., Inc.	Trenton
SOUTH DISTRICT	
Lippincott Engineering Associates, Inc.	Delanco
Long Engineering & Surveying Co.	Turnersville
SAFE International, Inc.	Cherry Hill
Speitel Associates	Marlton

DAM INSPECTION/DESIGN

Firm Name	Office Location
STATEWIDE	
Louis Berger & Associates, Inc.	East Orange
Ebasco Services, Inc.	Lyndhurst
Gannett-Fleming	Cherry Hill
Sidney M. Johnson & Associates	Union
Lippincott Engineering Associates, Inc.	Delanco
PRC Engineering	Iselin
Woodward-Clyde Consultants	Wayne

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Average Wholesale Price of Cigarettes Cigarette Surtax Rate

Notice

For the purpose of complying with the requirements of Chapter 40, P.L. 1982, Sec. 4 (N.J.S.A. 54:40A-8.2), John R. Baldwin, Director of the Division of Taxation, hereby gives notice that, based upon the best available current data, the average wholesale price of cigarettes in this State during the succeeding six months commencing January 1, 1986 is $0.4696 for each 10 cigarettes or fraction thereof.

Therefore, the cigarette surtax due for such six months, pursuant to Sec. 302 of P.L. 1948, c. 65 (C. 54:40A-8), as amended, shall remain at $.03 for each 10 cigarettes or fraction thereof.

ATTORNEY GENERAL'S OPINION

(a)

ATTORNEY GENERAL

Formal Opinion No. 1—1985

December 19, 1985

Honorable Roland Machold
Director, Division of Investment
CN-290
Trenton, New Jersey 08625

FORMAL OPINION NO. 1—1985

Dear Director Machold:

The Division of Investment has raised numerous questions concerning the interpretation and implementation of *L.* 1985, *c.* 308, *N.J.S.A.* 52:18A-89.1 *et seq.* the South African divestiture legislation enacted into law on August 27, 1985. The legislation prohibits the Division from making certain South African-related investments, requires it to divest itself of pre-existing ones, and prescribes certain reporting requirements concerning the implementation of the first two parts.

In regard to the prohibitory provision of the legislation, Section 1 provides in pertinent part, as follows:

> . . . no assets of any pension or annuity fund under the jurisdiction of the Division of Investment . . . shall be invested in any bank or financial institution which directly or through a subsidiary has outstanding loans to the Republic of South Africa or its instrumentalities, and no assets shall be invested in the stocks, securities or other obligations of any company engaged in business in or with the Republic of South Africa.

The paramount question raised is the meaning of the phrase, "any company engaged in business . . . in the Republic of South Africa." The phrase is not defined in the statute, nor is it susceptible to a precise definition. *Materials Research Corp. v. Metron,* 64 *N.J.* 74, 79 (1973). Whether a foreign corporation is doing, transacting or engaging in business in a state, or, in this case, another country, is a question dependent primarily on the facts and circumstances of each particular case, considered in light of the language and objects of the pertinent statute or constitutional provision involved. 36 *Am. Jur.*2d, *Foreign Corporations,* §317 (1984). As a general proposition, however, subject to such modifications as may be necessary in view of the purpose of particular statute involved, it is recognized that a foreign corporation is "doing," "transacting," "engaging in," or "carrying on" business in a particular state or country when it has entered the state by its agents and is there through such agents engaged in carrying on and transacting some substantial part of its ordinary or customary business. The business activity is deemed to be usually continuous in the sense that it may be distinguished from merely casual, sporadic or occasional transaction and isolated acts. *Id.* at §317.

There is no question, of course, that under this general definition a foreign company is engaged in business in a state or country where it maintains an office, factory, plant, or like location, from which it operates its customary or ordinary business. The real question here concerns whether there are any circumstances under which companies that do not actually maintain a physical presence in a state or country, but merely trade with entities in such state or country, nevertheless are engaged in business there.

The legislative history of the statute suggests that the Legislature did not intend to cover trading transactions. Assemblyman Brown, the leading sponsor of the bill commented at the legislative hearings held before the Assembly's State Government, Civil Service, Elections, Pensions and Veterans' Affairs Committee, as follows:

> I have introduced legislation, A1309, that would require the divestiture of all investments of the State's public pension and annuity funds which are *directly or indirectly linked to the South African regime.*
>
> Businesses which are *involved* in South Africa are not only profiting from an immoral, [repressive] system; they are directly playing an active role in maintaining the system and are, themselves, perpetrators of apartheid.
>
> United States *corporate investment,* including loans, in South Africa has totalled about $5 billion dollars in recent times, . . .; clearly, continued United States investment in South Africa is thereby supportive of South Africa in the economic growth in the well being and related strength of the government.
>
> The United States corporations have come *to dominate the sectors* of the South African economy most vital to its health and growth, and most strategic when considering the country's vulnerability: petroleum, computers and high technology, mining, and heavy engineering . . . .
>
> There are approximately 6,350 companies listed on the major exchanges in this country, of that number, less than 200 do business with South Africa, and these companies are apt to be heavy industrial or mature companies whose future growth rate might be lower than smaller companies. (Emphasis added).

(July 10, 1985 Hearing, pp. 14-15). Assemblyman Brown's references to businesses which are *involved* in South Africa, to businesses which have *investments* there, and to businesses which *dominate key sectors* of its economy, indicate that the concern of the legislature was with companies that maintained some sort of physical presence or operation in that country. This view is supported by the following written statement submitted to the committee by a co-sponsor of the bill, Assemblyman Eugene Thompson:

> . . . . Many of South Africa's black leaders believe that foreign investors should *pull out* of the country. . . .

> In the United States public and private organizations are enacting a veriety of policies to bring pressure upon corporations and financial institutions to *cease operations* in South Africa. (Emphasis added).

(July 10, 1984 Hearing, Exhibit 37X). Thus, co-sponsor Thompson referred here to the need for companies to "pull out" of South Africa and to "cease operations" there, suggesting that the companies in mind are those that had a physical presence in South Africa in the first place.

An estimate by Assemblyman Brown that only 200 companies would be affected by the divestiture legislation is significant. A survey undertaken by the Investor Responsibility Research Center Inc., (IRRC), a non-profit organization which monitors the involvement of foreign companies in South Africa, states there are approximately 200 companies which either directly own assets in South Africa, or which own at least 10% of an affiliate or subsidiary which does own assets in South Africa. There is no indication that Assemblyman Brown based his estimate on this survey, but it is clear as a matter of common knowledge there are far more than 200 foreign companies in the world which trade with entities located inside of South Africa. This would lead one to assume that Assemblyman Brown viewed the phrase, "any company engaged in business with or in South Africa," to exclude trading transactions by a foreign company, where no physical presence or operation is maintained by it in South Africa.

Furthermore, in a closely analogous context, the New Jersey Supreme Court has interpreted the phrase, "transact business in New Jersey," in New Jersey's corporate qualification law, as not applying to foreign corporations that merely sold goods from outside the state to a New Jersey citizen, even if the sale was solicited by the corporation's New Jersey sales agent, where the sale was subject to final acceptance by the foreign corporation. *Material Research Corp. v. Metron, supra,* at 79.

Moreover, if the phrase, "engaged in business . . . in South Africa," were intended to cover that kind of trading transaction, the additional prohibition in the law on engaging in business *with* the Republic of South Africa would have been unnecessary. The former prohibition would have been broad enough to cover the latter transaction. It is axiomatic that the Legislature is not presumed to enact superfluous statutory provisions. *Gabin v. Skyline Cabana Club,* 54 *N.J.* 550 (1969). The fact that the Legislature felt it necessary to add the prohibition on doing business with the Republic of South Africa must be construed as demonstrative of its intent to construe the phrase, "engaged in business," as generally noninclusive of mere trading entities. For these reasons, it is our interpretation of the legislative intent that the ban on investments in companies engaging in business in South Africa does not encompass those companies which trade with entities in South Africa, but do not maintain a physical presence, such as a factory, office or plant, either directly or indirectly through subsidiaries or affiliated corporations in that country.[1]

In some instances, though, foreign corporations which only trade with South African entities may have such a contractual relationship with them that in fact such entities really are acting as the agents of the foreign corporation; for example dealers, licensees, franchisees and distributors. In the context of qualification laws, where a foreign corporation has effective control over such entities, they are deemed to be transacting business in the territory in which such agents operate. 36 *Am. Jur.*2d, *Foreign Corporation,* §335, §363-364 (1968). Business generated by foreign corporation through intermediaries over whom they exercise effective control can be just as vital to the economy of South Africa as that generated by foreign corporations maintaining a presence there in their own name or capacity. Accordingly, it must be assumed the Legislature intended to proscribe investment in companies that operate not only directly in South Africa, but also through the vehicle of intermediaries over whom they exercise effective control.

The Division should adopt regulations which establish criteria as guidance to determine whether effective control is being exercised in individual instances. For example, as part of an inquiry as to whether an issuer has a disqualifying relationship to an agent, franchisee or distributor in South Africa, it would be important to know whether it has the contractual power to exercise discretion as to any of the following matters: (1) the price of goods sold to third parties; (2) the payment terms; (3) the acceptance of orders; (4) the recall of products; (5) the settlement of disputes over the quality or quantity of goods delivered; or (6) the nature of promotional or advertising campaigns. In addition, an ability to share in the profits of the intermediaries, would be indicative of control. An affirmative answer as to any of these questions would more likely than not support a determination that the corporation is transacting business in South Africa.[2]

You have also asked whether the divesture's mandate applies to corporations which, while they do not engage in business in South Africa in their own name, do so through subsidiaries or affiliates. As in the case of controlled intermediaries, it is clear that the divestiture law applies to foreign corporations that have subsidiaries or affiliates operating in South Africa. In order to interpret a statute, the purpose of the legislation must be considered. Where a literal rendering will lead to a result not in accord with the essential purpose and design of an act, the spirit of the law will control the letter. *New Jersey Turnpike Employees Union, Local No. 194 I.F.P.T.E. AFL-CIO v. New Jersey Turnpike Authority,* 200 *N.J. Super.* 48, 53 (App. Div. 1985). The evident purpose of the statute is to induce foreign companies, through the withdrawal of capital investment, to "pull out" of South Africa, thereby pressuring the government there to end apartheid. It would defeat that purpose if foreign companies seeking capital from our pension funds were construed to be not subject to the divestiture law merely because such companies do not operate in South Africa through their own corporate identities, but instead carry out their business purposes through the medium of subsidiaries or affiliates. Since the reality is that many, if not most, foreign corporate entities operate in South Africa in the latter fashion, and keeping in mind the remedial nature of the statute, it is concluded that the term, "company," in the phrase, "company engaged in business . . .," must be read liberally to include any subsidiary or affiliate of a corporate issuer.

[1]However, as noted, it is clear that the divestiture language also prohibits investment by the Division in companies which are engaged in business *with* the Republic of South Africa as well. Thus, it is clear that if a foreign company actually trades with the Republic of South Africa or its instrumentalities, then such companies are subject to the provisions of this legislation.

[2]If the Division does not have the resources to corroborate or verify the responses given, it would be an adequate approach to require a corporate officer, authorized by resolution of an issuer's board of directors to answer the inquiry and to certify to the truth of the answers. Random checks could then be performed to verify certain of the responses.

By the same token, the word "company" must be read to include any issuer which is itself a subsidiary or affiliate of a parent company engaged in business in South Africa. This situation is of importance to the Division because it invests a significant amount of money in short-term debt securities of finance companies that are subsidiaries of parents engaged in business in South Africa. The finance companies themselves operate only domestically. However, any investment in a subsidiary plainly benefits a parent company. It would equally defeat the salutary purpose of the legislation if pension and annuity funds were to be indirectly invested in companies engaged in business in South Africa through subsidiaries or affiliated companies rather than directly through a single parent corporate entity.

The Division has also asked whether it would be permissible to rely on the findings of the IRRC as to which companies are engaged in business in South Africa. Absent express statutory authorization, an administrative agency is not empowered to delegate discretionary duties to outside parties. *Application of North Jersey District Water Supply Commission,* 175 *N.J. Super.* 167 (App. Div. 1980). The legislation provides no authority for the delegation of any discretionary duties relating to its implementation. Although the canvassing or surveying of companies involves, to a certain extent, a fairly mechanical or ministerial task, the interpretation of the data received still requires some discretionary or interpretative judgment on the part of the party gathering the information. Therefore, the Division should directly ascertain for itself whether an issuer is one which is engaged in business with or in the Republic of South Africa in accordance with its regulations establishing standards and criteria. The most practical and effective procedure would be to prepare a questionnaire embodying the guidelines established by the Division and to send one to each issuer in which the Division is contemplating investment. This would be accompanied by a notice to each such company that the purpose of the questionnaire is to ascertain eligibility for investment under the legislation and, further, that the failure to respond within a certain period shall be taken as presumptive proof that the company is in fact engaged in business with or in the Republic of South Africa.[3]

You have also asked whether the legislation applies to investments of the New Jersey Cash Management Fund. That fund, (the "CMF"), is a common trust fund maintained by the Division of Investment in which are deposited surplus monies of the State, municipalities and local agencies, *and also* pension and annuity monies. These monies are then invested by the Division in certificates of deposit, commercial paper and other short-term debt securities. As provided in the regulations of the State Investment Council, the depositors in the CMF essentially share in the gains and losses resulting from the investments on a pro rata basis. Since the legislation is applicable to all assets of the pension and annuity funds and the CMF is an asset of pension funds to the extent of their proportional share therein, it is clear that the CMF is subject to the divestiture law as long as the pension and annuity funds continue to own shares therein. Application of the statute to the CMF, however, would cease were the Division to withdraw the pension and annuity funds from the CMF and establish a similar common fund strictly applicable to them, one that would have a South African-free portfolio.

[3]This is not to say, however, that the Division may not consider the IRRC findings. The IRRC publication may be used as source material and as a guide but the final determinations as to which companies are engaged in business in South Africa should always be made by the Division.

Another question raised is whether the Division is prohibited from entering into repurchase agreements with dealers and banks, if such companies are engaged in business in South Africa. The legislation prohibits the Division from investing pension and annuity funds in ". . . the stocks, securities or other obligations . . ." of any company engaged in business in South Africa. Repurchase agreements ("repos") are written agreements entered into between dealers or banks, on the one hand, and investors, on the other, whereby the former sell to the investors securities of third parties, consisting usually of government obligations or certificates of deposit, and promise to buy them back within a stated period of time at a premium. There are two basic types of repos: wholesale repos and retail repos. *See Note, Lifting the Cloud of Uncertainty Over the Repos Market: Characterization of Repos as Separate Purchases and Sales of Securities,* 37 *Vand L. Rev.* 401, 403-407 (1984). The former are typically short-term contracts to sell and repurchase large-denomination government securities. These repos are entered into by the Federal Reserve to carry out monetary policies or by government securities dealers to acquire short term funds. *Id.* at 405. Retail repos are usually longer term contracts to sell government securities or certificates of deposit and are usually entered into by depository institutions. *Ibid.* Wholesale repos are sold to sophisticated investors, whereas retail repos are often mass-marketed to smaller investors having varying levels of sophistication and expertise. *Ibid.*

While repos certainly represent contractual obligations of the dealer or bank, we do not read the phrase ". . . or other obligations," to mean any contractual or legal obligation of a party with whom the Division may deal. The legislation specifically bars *investments* by the Division, not any and all contracts entered into by it with companies doing business in South Africa. Indeed, on signing the bill, Governor Kean recommended that executive action now be considered restricting state contracts with vendors that engage in business in South Africa, making it clear that he did not intend it to encompass such normal contractual obligations between the State and outside parties. It is also an axiom of statutory construction that in the construction of a statute in which special language is followed by general language, the special language is, under the doctrine of *ejusdem generis,* definitive of the general language, and the general words are not to be construed in their widest sense, but are meant to apply only to things of the same general kind of class as those specifically mentioned. *Atlantic City Transportation Co. v. Walsh,* 6 *N.J. Super.* 262 (App. Div. 1950). Thus, the phrase, "or other obligation," must be read to apply only to the same general kind of class as those specifically mentioned, *i.e.* stocks and securities. It refers to "bonds," "notes" and other instruments designed and used to raise capital for a corporation.

The term "securities," a generic class of which the term "stocks," is itself a species, is generally defined as any financial scheme involving an investment of money by a party in a common enterprise, with the profits to come solely from the efforts of others. 69 *Am. Jur.*2d, *Securities Regulation,* S17 (1973). Since the United States Securities and Exchange Commission (SEC) is charged with the duty of enforcing and administering the federal securities laws, it is appropriate in this context to defer to that agency's judgment as to whether a particular transaction or device constitutes a security or similar-type of investment vehicle, given the absence of any definition in the divestiture law. In this regard, it is noted that SEC has issued a policy statement wherein it has determined that wholesale repos are not in themselves securities subject

to the registration requirements of the federal securities laws, but only represent instead a purchase and sale transaction in respect to the underlying security. *Note, supra,* at 423, citing 46 *Fed. Reg.* 48,637 (1981). Similarly, in two no-action letters issued by it, the SEC has implicitly determined to treat retail repos as purchases and sales of the underlying securities and not as the securities themselves. *Ibid,* citing 46 *Fed. Reg.* 48,637 (1981). Our review of the case law in the field has revealed no subsequent judicial decision invalidating these interpretations of repos by the SEC. You are advised that, unless the SEC should recharacterize repos as securities, or the federal courts should construe them as securities, their purchase by the Division would not be barred, provided the issuers of the underlying securities are not themselves engaged in business in South Africa.[4]

In a related question, you have also asked whether the Division may invest in an option or future contract involving a "market basket" of stocks selected from among the Standard and Poor 100 list of issuers. Suffice it to say that, to the extent the basket contains the stocks of companies engaged in business in South Africa or trading with the Government, the investment would be prohibited.

In regard to banks, the prohibitory provision of the legislation, provides that the Division may not invest pension and annuity monies in ". . . any bank or financial institution which directly or through a subsidiary has outstanding loans to the Republic of South Africa or its instrumentalities . . ." The Division has inquired as to whether it is prohibited from investing in a bank that may have had an outstanding loan to the Republic of South Africa at the time of enactment of the legislation, but no longer does. It also asks whether a company which was engaged in business in South Africa at the time of enactment, but ceased such business there, is subject to the divestiture law.

To conclude that the prohibition would continue to apply, regardless of future actions of a bank or company, would mean that, once prohibited, an investment in a bank would remain prohibited. The very purpose of the legislation, though, is to induce banks and companies to withdraw from South Africa. If a company is forever barred from eligibility for investment, there would of course be no inducement. The only reasonable construction of the legislation is that, if a bank no longer has outstanding loans to the Republic of South Africa or, if a company has ceased its business there, then the Division may invest in its stocks, securities and other obligations. Obviously, in such a case the purpose of the legislation has been fulfilled.

In a related matter, you have pointed out that some banks are trying to retire preexisting loans to the Republic of South Africa but, that, in some cases, it is impossible to retire the debt, short of writing it off. The question asked is whether the Division is prohibited from investing in such banks, despite their good intentions. Although disqualification of such banks may arguably defeat an aspect of the legislative purpose insofar as it may encourage banks seeking investment of our pension monies to write off the debt owed by the South African government, thereby helping it, the language used here by the Legislature is plain and unambiguous. Hence, no interpretative process is necessary, nor is the legislative wisdom in structuring a strict rule open to debate. Accordingly, it must be concluded that the intent of the Legislature was to impose the disqualification regardless of the good faith efforts of certain banks to alter lending practices as long as loans to the government remain outstanding.

It has been suggested that a conflict exists between two clauses in the prohibitory provision of the legislation in respect to banks, since the provision specifically bars investment in banks having outstanding loans to the Republic of South Africa, and also bars investment in *any* company engaged in business with or in the Republic of South Africa. The question that arises is whether a bank that does not have outstanding loans to the Republic of South Africa, but has a branch office in South Africa from which loans are made to South African companies—and, hence, is engaged in business there—is subject to this law. In our view, no such irreconcilable conflict exists. As in the case of non-bank commerical enterprises, a two part test exists. Those which merely trade their products in South Africa without being engaged in business there directly or through subsidiaries, affiliates or intermediates are outside the reach of the statute. Irrespective of whether they have a presence within South Africa, those doing business with or trading with the South African government triggers the divestiture act's provisions and its attendant disabilities. The same is true with respect to banks. That is the general statutory scheme, and while arguably there may have been no need to include the specific bank investment clause at all—since banks making loans to the government of South Africa are doing business with it within any reasonable definition of that phrase, and so would be subsumed in the broader prohibition—the fact that it was so included does not warrant the inference that the Legislature meant to otherwise relieve banks of the divestiture act's reach. Indeed, it would be anomalous to suggest that the Legislature intended to draw a distinction between banks having outstanding loans *with* the Republic of South Africa, and those doing business *in* that country, prohibiting investment in the former, but allowing investment in the latter. Given the breadth of the legislative object—to encourage retreat by companies essential to the economy of South Africa and thus encourage it to alter its ways—exemption of banks, save where they loaned monies directly to the South African government, would deprive the statute of much of its economic threat. Consequently, investment in banks engaged in business in South Africa, *as defined infra*), is prohibited, as well as investment in banks which have loans outstanding with the government of that country.

A further question presented in respect the prohibitory provision is whether it applies to assets of the Supplemental Annuity Collective Trust, established pursuant to *N.J.S.A.* 52:18A-107, *et seq.* State employees are authorized to supplement their state retirement benefits under the pension system by making additional or supplemental payments out of salary deductions into a trust called the Supplemental Annuity Collective Trust. *N.J.S.A.* 52:18A-113.1. The Trust is administered by a council, the Council of Trust, comprised of the State Treasurer, the Commissioner of Banking, and the State Budget Director. *N.J.S.A.* 52:18A-111. At the election of the worker, his or her contributions may be placed in either a Variable Division Account or a Fixed Division Account. *N.J.S.A.* 52:18A-116, 119. Monies in the former account are to be invested in common stocks and securities, listed on a securities exchange in the United States, *N.J.S.A.* 52:18A-115, while monies in the Fixed Division account are to be invested in fixed-income securities that are legal investments for life insurance companies. *N.J.S.A.* 52:18A-118. Upon retirement, a worker will get supplemental retirement benefits in the form

[4]Although we have found no SEC or judicial ruling on this, it follows, by the same reasoning, that vendors which contract to deliver securities of third parties to the Division presently, or for future delivery, are only involved in the purchase and sale of the underlying securities and are not themselves issuers of "securities" or "other obligations."

of a life annuity or of a cash payment, in lieu thereof, based *solely* on the contributions made by him and the income earned thereon from the investments. *N.J.S.A.* 52:18A-117. Unlike the regular pension systems, the supplemental annuity program is not a defined benefit plan—the worker is not entitled to a fixed retirement account—and, consequently, the State has no obligation to fund the Trust.

The law, by its terms, applies to ". . . any pension or annuity fund under the jurisdiction of the Division of Investment . . ." While the Supplemental Annuity Collective Trust is an annuity fund in a generic sense, the issue is whether it is an annuity fund under the jurisdiction of the Division of Investment. By statute, the Division is charged with responsibility for the investment of all monies belonging to the six state-administered retirement systems, *e.g.*, the Public Employee's Retirement System, plus monies in or belonging to the 1837 Surplus Revenue fund and the Trustees for the Support of Public Schools fund. *N.J.S.A.* 52:18A-88.1. No such specific charge is made to the Division of invest or manage the funds in the Trust. However, by understanding with the Council, *i.e.*, an inter-agency agreement, the Division invests the money in the Trust.

The question, therefore, is whether this difference in the source of legal responsibility for investment should remove the trust assets from the ambit of the divestiture legislation. The use of the word "jurisdiction" by the legislature does not provide a clear answer, since, as used in this context, the word is ambiguous. Jurisdiction generally and most commonly refers to the power of a court to hear or decide a judicial controversy. But it is reasonable to conclude that the Legislature here meant to use the word in the sense of an agency's having the administrative responsibility over a certain matter within the province of the Executive Branch, as where the Division of Taxation has the power to collect state taxes. The Division certainly has such responsibility here. It matters not that the source of the responsibility is by way of voluntary undertaking, rather than legislative mandate. Nor does it matter that the Council could oust the Division of its "jurisdiction" by opting to handle the investment of the trust's assets itself or through another agent. In sum, there is no question that the Trust is an annuity fund under the jurisdiction of the Division, and that, notwithstanding the lack of state contributions, it is an integral part of the State's overall retirement program. Hence, the provision of the statute applies to trust assets provided their investment remains within the responsibility of the Division.

Any doubt as to the validity of this conclusion is dissipated by the legislative history. During the legislative process, details concerning all the funds being managed by the Division were submitted to the Legislature—the fiscal note to A1309—and the trust assets were included. Presumably, therefore, the Legislature was aware that the Division invests the monies in the Trust and that the assets of the trust were thought encompassed within the ambit of the bill. Therefore, it is reasonable to conclude that if the Legislature had wanted to exclude the monies in the Trust from the scope of the divestiture law, it would have so provided. In this regard, during the legislative hearings concern was expressed by the drafters of the law that continued investment by the Division in companies engaged in business in South Africa would be morally repugnant to members of the retirement system whose contributions were the source of the investment monies. (Comments of Assembly Speaker Karcher at July 10, 1985 Hearing, *supra*, at 5). This concern, which prompted the legislation, applies with equal force to those members of the retirement system who have chosen to supplement their retirement incomes through contributions into the Trust. For these reasons, you are advised that the divestiture law applies to assets in the Trust, so long as the Division remains responsible for their investment.

You also have inquired as to the applicability of the divestiture law to monies invested by the Division from the Deferred Compensation Fund. Suffice it to say here that that Fund, established pursuant to *N.J.S.A.* 52:18A-163, *et seq.*, is not part of the State's pension system, but is simply a fund established by law, consistent with IRS regulations, to allow workers the opportunity to establish the equivalent of individual retirement accounts in order to defer taxable income. As such, the Deferred Compensation Fund is not subject to the divestiture law.

Turning to the divestiture provision of the statute, Section 2 states in pertinent part that:

> ". . . the Division of Investment shall take appropriate action to sell, redeem, divest or withdraw any investment held in violation of the provisions of this act. Nothing in this act shall be construed to require the premature or otherwise imprudent sale, redemption, divestment or withdrawal of an investment, but such sale, redemption, divestment or withdrawal shall be completed not later than three years following the effective date of this act."

It has been suggested that the required divestiture within three years might, in regard to certain of the Division's investments, contravene the prudency requirement imposed on fiduciaries under the New Jersey Prudent Investor Law, *N.J.S.A.* 3B:20-12 *et seq.*, which establishes the so-called prudent investor standard for New Jersey fiduciaries. By virtue of *N.J.S.A.* 52:18A-88.1, investment of funds in the State-administered retirement systems by the Division is subject to that prudency law. You are concerned because, under the divestiture legislation, the Division is required to dispose of certain low-interest bonds prior to their date of maturity. You are advised, however, that since this section of the statute imposes a divestiture requirement on the Division, it must be considered to have modified the prudent investor standard. Thus, even if divestiture might, in other circumstances, be deemed imprudent under the Prudent Investor Law, it is nevertheless sanctioned, and indeed required. It is true of course that the divestiture provision states that nothing therein shall be deemed to require a "premature or otherwise imprudent" divestment, but this is plainly qualified by the controlling three year time limit for divestment. The plain thrust of this provision is that the Division need not dispose of its South African-related portfolio immediately, but should manage that portfolio so as to achieve divestiture at a point within the three years where the loss to be sustained is minimized. In any event, general prudency standards are superceded by the three-year divestiture requirement, at least insofar as it applies to the South African-related portfolio.

Questions have also been raised in respect to the timing and substance of the periodic lists and reports that the Division must file with the Legislature regarding the progress of divestiture. The reporting provision of the law in Section 3 directed that, within 30 days of the law's enactment, the Division had to file with the Legislature a list of all investments held as of the effective date, ". . . which are in violation of the provisions of this act," (the "initial list"). This, you have advised, the Division has already done. The reporting provision also requires, however, that:

> . . . Every three months thereafter, and until all of these investments are sold, redeemed, divested or withdrawn, the director shall file with the Legislature a list of the remaining investments. The director shall include with the first such list, and with the lists to be filed at six month intervals thereafter, a. a report of the progress which the division has made since the previous report and since the enactment of this act in implementing the provisions of section 2 of this act, and b. an analysis of the fiscal impact of the implementation of those provisions upon the total value of and return on the investments affected, taking all possible account of the investment decisions which would have been made had this act not been enacted, and including an assessment of any increase or decrease, as the result of the implementation of those provisions and not as the result of market forces, in the overall investment quality and degree of risk characteristic of the pension and annuity funds' portfolio.

You have asked whether the list of remaining investments, next following the initial list, (the "second list"), should be filed three months from the effective date of the act, *i.e.* August 27, 1985, or, instead, three months from the date of filing of the initial list. The reporting provision, as noted, imposes the requirement that the initial list be filed within 30 days of enactment and that the filing of the second list should occur "every three months thereafter." It is clear from this sequence that the word, "thereafter," refers back to the filing of the initial list, not the date of enactment. Thus, the second list is due to be filed 90 days from the date the initial list was filed.[5]

You have also asked when the first progress report must be filed. The above quoted provision states that the Director is to include the first progress report "with the first such list," without specifying whether the initial, or the second list, was intended. Referential and qualifying phrases in a statute refer solely to the last antecedent where no contrary intention appears. *State v. Congdon,* 76 *N.J. Super.* 493 (App. Div. 1962). Here, the antecedent is the second list. It would also be illogical to interpret the provision as requiring that a progress report on divestiture be included with the initial list, since no meaningful progress could realistically be achieved within only 30 days of enactment. You are, accordingly, advised that the first progress report shall be due upon the filing of the second list.

This will also confirm our previous advice that the filing of that list may be deferred a very brief period of time so as to enable the Division to include in its progress report the most up-to-date financial information. The Division's records as to the value of its portfolio and other information is based in part on the most current quarterly financial reports filed by corporate issuers. Since the initial list was filed September 26, 1985, technically, the second list is due December 26, 1985, but that would mean that the most recent quarterly reports would have been dated September 30, 1985, whereas, if the Division deferred filing a brief time, its progress report would include the most recent data deriving from the December 31, 1985 quarterly reports. Such deferment would be a one-time matter only, since the progress reports would be synchronized thereafter with the most recent quarterly reports.

A primary purpose of the periodic progress report provision is to enable the Legislature to periodically assess the wisdom of the legislation in light of predictions made by the Chairman of the State Investment Council and others at the legislative hearings that divestiture would result in substantial losses to the pension funds. That purpose would be more adequately fulfilled if those reports included the most recent financial information available. Accordingly, a brief, one-time only, filing delay would not contravene the legislation.

Finally, you have conveyed to us the concern of some members of the State Investment Council that the constitutionality of divestiture law might at some point be challenged in Court and that, if the challenge were proven meritorious, the members of the Council might be subjected to personal liability or surcharged for imprudent investment decisions. Because there is the distinct possibility that the legislation might in fact be challenged, it would be inappropriate for us to comment at this time on the constitutionality of the law, except to note that, under settled principles of constitutional law and statutory construction, this legislation is presumed to be constitutional. That being the case, it follows that to the extent the members of the Council or the Director of the Division complied with the dictates of that law, they would be acting within the scope of their duties and, accordingly, would, without question, be entitled to the full protection of the New Jersey Tort Claims Act, *N.J.S.A.* 59:1-1 *et seq.,* including its immunity provisions as well as to full indemnification and representation by the State for any claims arising from such actions.

In summary, based upon an interpretation of the statutory language, a review of legislative history and an awareness of the social purposes for which the divestiture legislation was enacted, you are advised of the following major conclusions: The prohibition on investment by the Division of Investment in stocks, securities and obligations of any company engaged in business in the Republic of South Africa means any company conducting ongoing business activities in that country and maintaining a physical presence through the operation of offices, plants, factories, and similar premises and would not include trading transactions by a company with entities in that country. The prohibitory language of the statute would encompass corporations whose intermediaries, subsidiaries and affiliated companies over which a corporation maintains effective control engage in business in or with the Republic of South Africa. The legislation applies to investments made by the New Jersey Cash Management Fund to the extent state pension and annuity funds continue to own shares therein. There is no ban on the Division of Investment entering into repurchase agreements with dealers and banks doing business in South Africa provided the issuers of the underlying securities are not themselves engaged in business in South Africa. The prohibitory provisions of the legislation would not preclude investment in a banking institution which retired an outstanding loan to the Republic of South Africa but would apply to such a banking institution where the loan has not yet been retired. The terms of the act also apply to prohibit investments in banking institutions which engage in business in South Africa in the same manner as a nonbanking institution, as well as prohibiting investment in any banking institution making loans directly to the government of the Republic of South Africa. The prohibitory provision of the act applies to assets of the New Jersey Supplemental Annuity Collective Trust because the Trust is an annuity fund under the jurisdiction of the Division of Investment and subject to the state's overall retirement program but would not apply to monies

[5]The initial list was filed September 26, 1985. Therefore, the second list is technically due to be filed December 26, 1985, but see text this page.

invested from the state's Deferred Compensation Fund. Finally, insofar as the procedural requirements of the act relative to reporting requirements of the Division of Investment are concerned, you are advised that a list of the Division's investments following the initial list filed with the legislature should be filed 90 days from the date the initial list was filed. Further, a progress report on the Division's activities regarding divestiture should be filed with the legislature together with the filing of the second list of investments; but the second list of investments may be deferred a brief period of time to enable the Division to include up to date information in its progress report.

Very truly yours,

IRWIN I. KIMMELMAN
Attorney General

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 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 2, 1985 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 timely adopt a proposed rule 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(d).

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.1985 d.300 means the three hundredth rule adopted in 1985.

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 number and date verifying 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.

N.J.R. CITATION LOCATOR

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17 N.J.R. 141 and 236	January 21, 1985	17 N.J.R. 1819 and 1954	August 5, 1985
17 N.J.R. 237 and 338	February 4, 1985	17 N.J.R. 1955 and 2070	August 19, 1985
17 N.J.R. 339 and 502	February 19, 1985	17 N.J.R. 2071 and 2170	September 3, 1985
17 N.J.R. 503 and 634	March 4, 1985	17 N.J.R. 2171 and 2318	September 16, 1985
17 N.J.R. 635 and 762	March 18, 1985	17 N.J.R. 2319 and 2484	October 7, 1985
17 N.J.R. 763 and 858	April 1, 1985	17 N.J.R. 2485 and 2584	October 21, 1985
17 N.J.R. 859 and 1006	April 15, 1985	17 N.J.R. 2585 and 2710	November 4, 1985
17 N.J.R. 1007 and 1158	May 6, 1985	17 N.J.R. 2711 and 2814	November 18, 1985
17 N.J.R. 1159 and 1358	May 20, 1985	17 N.J.R. 2815 and 2934	December 2, 1985
17 N.J.R. 1359 and 1460	June 3, 1985	17 N.J.R. 2935 and 3032	December 16, 1985
17 N.J.R. 1461 and 1608	June 17, 1985	18 N.J.R. 1 and 128	January 6, 1986
17 N.J.R. 1609 and 1700	July 1, 1985	18 N.J.R. 129 and 234	January 21, 1986
17 N.J.R. 1701 and 1818	July 15, 1985	18 N.J.R. 235 and 376	February 3, 1986

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1:1-3.8	Attorney disqualification from a case	18 N.J.R. 2(a)		
1:1-14.6	Consolidated cases involving exempt agencies	18 N.J.R. 130(a)		
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1:2-2.1, 2.4	Conference hearings and employee/employer disputes	17 N.J.R. 2712(a)		
1:6A-5.4	Special education hearings: placement of child pending an appeal	17 N.J.R. 2586(a)		
1:30	Agency rulemaking	18 N.J.R. 3(a)		
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2:48-5	Use of coupons in milk promotions	17 N.J.R. 2486(a)	R.1985 d.649	18 N.J.R. 77(a)
2:53-3	Milk sales below cost by stores	Emergency	R.1985 d.648	17 N.J.R. 3014(a)
2:90-1.5, 1.14	Soil conservation plan certifications; minor subdivisions	17 N.J.R. 2172(a)		
2:90-1.13	Soil conservation: extraction activity	17 N.J.R. 1957(a)		
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3:1-2.24	Modification of Commissioner's Order restricting stock transfers	17 N.J.R. 2487(a)		
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3:6-11	Short-term investments for trust cash	17 N.J.R. 2937(a)		
3:11-11	Leeway investments	18 N.J.R. 132(a)		
3:19-1	Home repair financing	18 N.J.R. 15(a)		
3:26-4.1	State savings and loan parity with Federal associations	17 N.J.R. 2713(a)	R.1985 d.720	18 N.J.R. 266(b)
3:38-5.2	Return of borrower's commitment fee	17 N.J.R. 2488(b)		
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4:1-10.1, 10.2	Noncompetitive and labor appointments	17 N.J.R. 2937(b)		
4:1-12.12	Restorations to promotional lists	17 N.J.R. 645(a)		
4:1-23	Grievances and minor discipline	17 N.J.R. 2587(a)		
4:2-12.1, 12.2	Appeals concerning removal from eligible list for medical reasons	17 N.J.R. 1957(b)	R.1985 d.661	18 N.J.R. 77(c)
4:2-23	Grievances and minor discipline	17 N.J.R. 2587(a)		
4:3-12.1, 12.2	Appeals concerning removal from eligible list for medical reasons	17 N.J.R. 1957(b)	R.1985 d.661	18 N.J.R. 77(c)
4:3-23	Grievances and minor discipline	17 N.J.R. 2587(a)		
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5:11-6.1	Prior filing of Workable Relocation Assistance Plans	17 N.J.R. 2321(a)		
5:12-2.4, 2.5	Homelessness Prevention Program: eligibility and priorities	17 N.J.R. 2939(a)		
5:14	Neighborhood Preservation Balanced Housing Program	17 N.J.R. 2489(a)	R.1985 d.688	18 N.J.R. 162(a)
5:18-1.1, 1.3, 1.4, 1.5, 2.4, 2.5, 2.7, 2.8, 2.12, 3.1, 3.2	Uniform Fire Code	17 N.J.R. 1015(b)	R.1985 d.611	17 N.J.R. 2870(a)
5:18-1.1, 1.4, 1.5, 1.6, 2.3, 4	Uniform Fire Code, Fire Safety Code	17 N.J.R. 1161(a)		
5:18A-2.1—2.4, 2.6, 3.2, 3.3, 4.1, 4.3, 4.4	Fire Code Enforcement	17 N.J.R. 1015(b)	R.1985 d.611	17 N.J.R. 2870(a)
5:18B-3.2	High Level Alarms	17 N.J.R. 1015(b)	R.1985 d.611	17 N.J.R. 2870(a)
5:23-2.14, 4.18, 4.20	UCC: annual construction permits	17 N.J.R. 2490(a)		
5:23-2.15, 2.21	UCC: engineers and architects	17 N.J.R. 1033(a)		
5:23-3.11, 4.22, 4.24, 4.25	Uniform Construction Code: premanufactured construction	17 N.J.R. 1169(a)		
5:23-3.15	UCC: Plumbing Subcode	17 N.J.R. 2714(a)	R.1986 d.12	18 N.J.R. 267(a)
5:23-5.4, 5.5	UCC inspectors: experience requirements	17 N.J.R. 1821(a)	R.1985 d.612	18 N.J.R. 80(a)
5:23-5.11	Uniform Construction Code: revocation of licenses	18 N.J.R. 16(b)		
5:25	New Home Warranties and Builders' Registration	17 N.J.R. 2816(a)		
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 218(a)		
5:28	Readopt State Housing Code	17 N.J.R. 1174(a)	R.1985 d.689	18 N.J.R. 163(a)
5:37	Municipal, County and Authority Employees Deferred Compensation Programs	17 N.J.R. 1960(a)	R.1985 d.598	17 N.J.R. 2749(b)
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5:80-20	HMFA housing projects: applicant and tenant income certification	17 N.J.R. 2321(b)		
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6:11-3	Teacher education: Basic Certification Requirements	17 N.J.R. 2181(a)	R.1985 d.665	18 N.J.R. 85(a)
6:11-7	Standards for State approval of teacher preparation	17 N.J.R. 1708(a)	R.1985 d.613	17 N.J.R. 2884(a)
6:12	Governor's Teaching Scholars Program	18 N.J.R. 135(a)		

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6:21-16.1	Pupil transportation contracts	18 N.J.R. 138(a)		
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6:43-1.3	Vocational and technical education: schools designated "other than full-time day"	17 N.J.R. 2940(a)		
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7:2-11.22	Bear Swamp East natural area	18 N.J.R. 139(a)		
7:2-12	Open lands management	17 N.J.R. 866(b)		
7:7-2.2	Wetlands maps in Ocean County	17 N.J.R. 1710(a)		
7:7E	Revisions to Coastal Resources and Development rules	17 N.J.R. 1466(a)	R.1985 d.715	18 N.J.R. 314(a)
7:7E	Coastal Resource and Development revisions: extension of comment period	17 N.J.R. 1797(b)		
7:7E	Coastal Resource and Development Policies: correction to Code and proposed revisions	17 N.J.R. 1797(c)		
7:9-15	Restoration of publicly-owned freshwater lakes	17 N.J.R. 2182(a)	R.1985 d.717	18 N.J.R. 163(b)
7:11-2.2, 2.3, 2.9	Sale of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoirs	18 N.J.R. 17(a)		
7:12-2.7	Hard clam relay program	17 N.J.R. 2185(a)	R.1985 d.634	17 N.J.R. 2971(b)
7:13-7.1	Flood hazard area along Long Brook and Manasquan River	17 N.J.R. 2324(a)		
7:13-7.1(c)29	Floodway delineations within Maurice River Basin	17 N.J.R. 2186(a)		
7:13-7.1(d)14	Flood hazard along Lamington River in Morris County	17 N.J.R. 2324(a)		
7:13-7.1(d)47	Redelineation of Pine Brook in Bergen County	17 N.J.R. 2074(a)		
7:13-7.1(d)49	Floodway delineations in Union County	17 N.J.R. 1965(a)		
7:13-7.1(d)53	Floodway delineations in Raritan Basin (Project H)	17 N.J.R. 2492(a)		
7:13-7.1(h)	Floodway delineations in Hackensack Basin	17 N.J.R. 1175(a)		
7:13-7.1(i)	Floodway delineations in Central Passaic Basin Projects G and R	17 N.J.R. 1176(a)		
7:17	Hard shell clam depuration: pilot plant program	18 N.J.R. 140(a)		
7:17	Hard shell clam depuration: pilot plant program	18 N.J.R. 141(a)		
7:25-4.6	Nongame and exotic wildlife: possession permit fees	17 N.J.R. 2589(a)	R.1985 d.716	18 N.J.R. 166(a)
7:25-5.12	Use of steel-jaw leghold traps	17 N.J.R. 2714(b)	R.1986 d.24	18 N.J.R. 354(a)
7:25-6	1986-87 Fish Code	17 N.J.R. 2187(a)	R.1985 d.646	17 N.J.R. 2972(a)
7:25-9	Minimum legal size for hard clams	18 N.J.R. 146(a)		
7:25-15.1	Hard clam relay program	17 N.J.R. 2191(a)	R.1985 d.633	17 N.J.R. 2976(a)
7:25-17	Disposal and possession of dead deer	17 N.J.R. 2715(a)		
7:25-18	Marine fisheries	Emergency	R.1985 d.674	18 N.J.R. 102(a)
7:25-19	Atlantic Coast harvest season	17 N.J.R. 2494(a)		
7:26-1.4, 1.6, 9.1, 12.1	Tolling agreements and reclamation of hazardous waste	17 N.J.R. 1968(a)		
7:26-1.4, 7.4, 9.1, 12.1, 12.8	Reuse of hazardous waste	17 N.J.R. 2716(a)		
7:26-1.4, 9.3	Above-ground tank storage of hazardous waste	17 N.J.R. 1501(a)	R.1985 d.620	17 N.J.R. 2885(a)
7:26-1.7	Waste management: on-site disposal of construction debris	17 N.J.R. 1040(a)	R.1985 d.666	18 N.J.R. 99(a)
7:26-1.7	Solid waste disposal: exemption from registration	17 N.J.R. 1368(a)		
7:26-1.8	Solid waste disposal: land application operations	17 N.J.R. 2945(a)		
7:26-2.6, 2.7	Disposal of asbestos waste	17 N.J.R. 2719(a)		
7:26-6.5	Solid waste flow: Ocean County	17 N.J.R. 2590(a)		
7:26-6.5	Solid waste flow: Camden County	17 N.J.R. 2591(a)		
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7:27-14.3	Diesel-powered motor vehicles: idle standard	16 N.J.R. 2887	R.1985 d.610	17 N.J.R. 2887(a)
7:27-15.6	Gas-fueled motor vehicle: idle standard	16 N.J.R. 2889	R.1985 d.610	17 N.J.R. 2887(a)
7:27-16	Air pollution by volatile organic substances	17 N.J.R. 1969(a)		
7:27B-3	Determination of volatile organic substances from source operations	17 N.J.R. 2194(a)		
7:27B-4.6	Lead test paper procedure	17 N.J.R. 781(a)		
7:45	Delaware Raritan Canal State Park: Review Zone rules	17 N.J.R. 1711(a)		
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8:9-1.11	Disposal of cremains: public hearing	17 N.J.R. 2835(a)		
8:13-2.1, 2.4, 2.6—2.11, 2.13, 2.14	Depuration of soft shell clams	17 N.J.R. 1370(a)	R.1985 d.691	18 N.J.R. 166(b)
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8:31B-3.76-3.82	Hospital reimbursement: URO performance evaluation; post-billing denial of payments	18 N.J.R. 150(b)		
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8:33F-1.2, 1.6, App. B	Renal disease: regional end-stage services	17 N.J.R. 2948(a)		
8:34-1.8	Nursing home administrators: limitations on responsibility	18 N.J.R. 74(a)		
8:34-1.9	Reexamination for Nursing Home Administrator's License	18 N.J.R. 75(a)		
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8:43-1	Residential health care facilities	17 N.J.R. 2498(a)	R.1985 d.684	18 N.J.R. 173(a)
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8:43B-5	Licensure of hospital facilities: personnel	17 N.J.R. 2501(b)	R.1985 d.683	18 N.J.R. 174(a)
8:43B-8.16	Obstetric and newborn services: use of oxytocic agents	17 N.J.R. 2213(a)		
8:43B-8.33—8.44	Newborn care services: physical plant standards	17 N.J.R. 519(a)	R.1986 d.1	18 N.J.R. 267(a)
8:43B-15	Hospital facilities: renal dialysis services	17 N.J.R. 2503(a)	R.1985 d.682	18 N.J.R. 174(b)
8:43B-16	Hospital facilities: nurse-midwifery services	17 N.J.R. 2512(a)	R.1985 d.681	18 N.J.R. 180(a)
8:43E-1	Hospital Policy Manual: Certificate of Need rules	17 N.J.R. 1220(a)		
8:44-2.10	Reportable occupational and environmental diseases and poisons	17 N.J.R. 1831(a)		
8:53	Implementation of Local Health Services Act	17 N.J.R. 2836(a)		
8:57-1.19, 1.20, -6	Cancer registry	17 N.J.R. 2836(b)		
8:60-1.1, 4.2, 4.4, 4.8, 5.2, 5.4, 5.7, 6.1, 6.3, 6.11	Asbestos licenses and permits	18 N.J.R. 156(a)		
8:65-5	Controlled dangerous substances: records and reports of registrants	17 N.J.R. 524(a)	R.1985 d.606	17 N.J.R. 2890(a)
8:65-8	Controlled dangerous substances: manufacture, distribution, disposal and nondrug use	17 N.J.R. 2721(a)		
8:65-10.1	Controlled dangerous substances: 3, 4-methylenedioxymethamphetamine	17 N.J.R. 2214(a)	R.1985 d.669	18 N.J.R. 87(a)
8:65-10.1	Temporary placement of Meperidine analogs MPPP and PEPAP into Schedule I	17 N.J.R. 2950(a)		

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8:71	Additions to generic drug list (see 17 N.J.R. 1295(a), 1562(a), 2043(a), 2556(a))	17 N.J.R. 158(a)		
8:71	Generic drug list additions (see 17 N.J.R. 2042(b), 2556(b), 2769(a))	17 N.J.R. 1043(a)	R.1985 d.686	18 N.J.R. 182(a)
8:71	Genric drug list additions (see 17 N.J.R. 2557(a), 2769(b))	17 N.J.R. 1733(a)	R.1985 d.687	18 N.J.R. 183(a)
8:71	Generic drug list additions	17 N.J.R. 2842(a)		
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9:2-11	Veterans Tuition Credit Program	17 N.J.R. 2844(a)		
9:2-12.2	Teacher education: curriculum	17 N.J.R. 22(b)	Expired	
9:5-1, 2	Tuition policies at public institutions	17 N.J.R. 2326(a)	R.1985 d.701	18 N.J.R. 183(b)
9:7-2.3	Status of foreign nationals	18 N.J.R. 19(a)		
9:7-2.9	Student assistance programs: award combinations	17 N.J.R. 2725(a)		
9:7-3.1	Tuition Aid Grant Progam: 1986-87 Award Table	18 N.J.R. 19(b)		
9:7-4.1, 4.2, 4.3, 4.5, 4.8	Garden State Scholarship Program	17 N.J.R. 2726(a)		
9:9-1.6	Guarantee Student Loans and payment of insurance fee	17 N.J.R. 2727(a)		
9:9-1.16	Interest liability on defaulted student loans	17 N.J.R. 2728(a)		
9:9-9.2	Direct PLUS program and co-signer requirement	17 N.J.R. 2728(b)		
9:11, 12	Educational Opportunity Fund Program rules	17 N.J.R. 2214(b)		
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10:36-1	Patient supervision at State psychiatric hospitals: public hearing	18 N.J.R. 20(a)		
10:36-2	Clinical review procedures for special status psychiatric patients	17 N.J.R. 2951(a)		
10:37	Community Mental Health Services	17 N.J.R. 2222(a)	R.1985 d.605	17 N.J.R. 2894(a)
10:42	Developmental Disabilities: Emergency Mechanical Restraint	17 N.J.R. 1832(a)		
10:48	Division of Mental Retardation: appeal procedures	17 N.J.R. 876(b)	R.1985 d.673	18 N.J.R. 184(a)
10:49-1.1	Administration Manual: retroactive Medicaid eligibility	17 N.J.R. 2729(a)		
10:49-1.4	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)		
10:50	Transportation Services: HCFA Common Procedure Coding System	17 N.J.R. 1519(b)		
10:51-1.14, 5.16	Pharmaceutical services: ineligible prescription drugs	17 N.J.R. 2730(a)		
10:51-4	Consultant Pharmacist Services	17 N.J.R. 2731(a)		
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10:52-1.16	Termination of pregnancy in licensed health care facilities	17 N.J.R. 1375(a)		
10:52-1.17	Out-of-state inpatient hospital services	17 N.J.R. 2225(a)		
10:52-1.21	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)		
10:53-1.1, 1.16	Ambulatory surgical centers	16 N.J.R. 3153(a)	R.1985 d.532	17 N.J.R. 2894(b)
10:53-1.14	Termination of pregnancy	17 N.J.R. 1375(a)		
10:54	Physician Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:54-1.23	Termination of pregnancy	17 N.J.R. 1375(a)		
10:55	Prosthetic-Orthotic Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:56-3	Dental Services: procedure codes and descriptions	18 N.J.R. 154(a)		
10:57	Podiatry Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:58	Nurse Midwifery Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:59	Medical Supplier Manual: Common Procedure Coding System	17 N.J.R. 1519(b)		

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10:59-1.11	Medical Supplier Manual: repair of durable medical equipment	17 N.J.R. 2516(a)	R.1985 d.671	18 N.J.R. 186(a)
10:59-2.1—2.11	Medical Supplier Manual: billing procedures	17 N.J.R. 2326(b)	R.1985 d.628	17 N.J.R. 2977(a)
10:60-1.1, 1.2, 2.2, 2.3, 3.1	Personal care assistant services: hours per week and rate of reimbursement	17 N.J.R. 2327(a)	R.1985 d.656	18 N.J.R. 87(b)
10:60-2.2, 3.1	Personal care assistant services: procedure codes	17 N.J.R. 2330(a)	R.1985 d.656	18 N.J.R. 87(b)
10:61	Independent Laboratory Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:62	Vision Care: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:63-1.5, 1.6, 1.8, 1.13, 2.5, 2.7	Long term care facilities: certification and plan of care	17 N.J.R. 2075(a)	R.1985 d.703	18 N.J.R. 187(a)
10:63-3	Vision Care Manual: billing procedures	17 N.J.R. 2731(b)		
10:63-3.2, 3.5, 3.10, 3.19	Reimbursement to long-term care facilities	17 N.J.R. 2331(a)	R.1985 d.705	18 N.J.R. 189(a)
10:63-3.17	Long Term Care Services: adjustments to base period data	17 N.J.R. 1736 (a)		
10:64	Hearing Aid Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:66	Independent Clinic Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:66-1.1, 1.2, 1.3, 1.6, 1.7, 1.9	Ambulatory surgical centers	16 N.J.R. 3153(a)	R.1985 d.532	17 N.J.R. 2894(b)
10:66-1.2, 1.6, 3.3	Narcotic and drug abuse treatment centers	17 N.J.R. 1235(a)		
10:66-1.6	Termination of pregnancy	17 N.J.R. 1375(a)		
10:66-1.6, 3.3	Personal care assistant services: hours per week and rate of reimbursement	17 N.J.R. 2327(a)	R.1985 d.656	18 N.J.R. 87(b)
10:66-3.3	Personal care assistant services: procedure codes	17 N.J.R. 2330(a)	R.1985 d.656	18 N.J.R. 87(b)
10:67	Psychological Services: Common Procedure Coding System	17 N.J.R. 1519(b)		
10:69A-1.1, 1.2, 2.1, 4.1, 4.4, 5.3, 6.2, 6.4, 6.10	PAAD: eligibility standards	17 N.J.R. 2332(a)	R.1985 d.690	18 N.J.R. 190(a)
10:81-2.7, 3.18	PAM: continued absence; WIN registration	17 N.J.R. 2333(a)	R.1986 d.9	18 N.J.R. 272(a)
10:81-2.16, 3.18	PAM: photo IDs; ex-WIN children	17 N.J.R. 2335(a)	R.1986 d.6	18 N.J.R. 273(a)
10:81-10.7	PAM: eligibility for refugee and entrant programs	17 N.J.R. 2227(a)		
10:81-11.2, 11.7, 11.9, 11.20	PAM: child support paternity	17 N.J.R. 2845(a)		
10:81-11.3, 11.9	PAM: Social Security numbers; restriction of information	17 N.J.R. 2516(b)		
10:81-11.9	PAM: reimbursement by counties to State	17 N.J.R. 369(a)		
10:81-11.9	Public Hearing: County reimbursement to State for Tax Setoff Program for child support enforcement	17 N.J.R. 1526(a)		
10:82-1.7, 2.3	Correction to Administrative Code	————	————	17 N.J.R. 2917(a)
10:82-1.10, 1.11	ASH: retrospective budgeting and monthly reporting	17 N.J.R. 2518(a)	R.1985 d.710	18 N.J.R. 191(a)
10:82-2.19	ASH: recovery of overpayments	17 N.J.R. 2847(a)		
10:82-3.2	ASH: exempt resources	17 N.J.R. 2518(b)	R.1985 d.709	18 N.J.R. 192(a)
10:82-3.9, 3.11, 3.14, 4.13	ASH: evaluation of legally responsible relatives in AFDC	18 N.J.R. 20(b)		
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2336(a)		
10:82-5.10	ASH: emergency assistance	17 N.J.R. 2337(a)		
10:85-3.2	GAM: determination of unemployability	17 N.J.R. 547(a)		
10:85-3.2	GAM: nursing home patients from out-of-state	17 N.J.R. 2338(a)	R.1985 d.692	18 N.J.R. 192(b)
10:85-3.3	GAM: unearned income exclusion	17 N.J.R. 2849(a)		
10:85-3.3, 5.2	GAM: hospital notices and billings	17 N.J.R. 2519(a)		
10:85-3.4	GAM: disposal of resources	17 N.J.R. 2339(a)	R.1985 d.693	18 N.J.R. 193(a)
10:85-3.4	GAM: eligibility in other programs	17 N.J.R. 2520(a)	R.1986 d.4	18 N.J.R. 274(a)
10:85-3.4	GAM: disposal of assets	17 N.J.R. 2952(a)		
10:85-3.4	GAM: parent-sponsored aliens	18 N.J.R. 21(a)		
10:85-5.2, 11.2	GAM: inpatient hospital care	17 N.J.R. 2521(a)	R.1986 d.7	18 N.J.R. 274(b)
10:85-5.3	GAM: nursing home bed-hold payments	17 N.J.R. 2953(a)		
10:85-10.1	GAM: "Workfare" defined	17 N.J.R. 2849(b)		
10:85-10.8	GAM: work registration violations and Food Stamp recipients	17 N.J.R. 1838(a)	R.1985 d.618	17 N.J.R. 2900(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
10:86	Repeal obsolete AFDC Work Incentive Program rules	17 N.J.R. 1838(b)		
10:87-2.38, 5 9	Food Stamp Program: elderly or disabled defined; JTPA income exclusion	17 N.J.R. 2521(b)	R.1985 d.707	18 N.J.R. 193(b)
10:87-5.10, 12.1	Food Stamp Program: utility allowance standards	Emergency	R.1985 d.713	18 N.J.R. 214(a)
10:87-12.1, 12.2	Food Stamp Program: income deductions, maximum coupon allotments	17 N.J.R. 2564(a)	R.1985 d.647	17 N.J.R. 2978(a)
10:89-2.2, 2.3, 3.2, 3.3, 3.4, 3.6, 4.1, 5.1	Home energy assistance	17 N.J.R. 2791(a)	R.1985 d.708	18 N.J.R. 194(a)
10:90-2.2, 2.3, 2.4, 2.6, 3.3, 4.1—4.10, 5.1, 5.2, 5.6, 6.1, 6.2, 6.3	Monthly Reporting Policy Handbook	17 N.J.R. 1839(a)		
10:94-1.6, 3.14	Medicaid Only: ineligible individuals	17 N.J.R. 2522(a)		
10:94-3.6	Medicaid Only: change of county of residence	17 N.J.R. 2523(a)	R.1986 d.8	18 N.J.R. 275(a)
10:94-4.1	Medicaid Only: resource eligibility	17 N.J.R. 2524(a)		
10:94-4.1	Medicaid Only: availability of resources in third-party situations	17 N.J.R. 2954(a)		
10:94-5.4, 5.5, 5.6, 5.7	Medicaid Only: eligibility computation amounts	Emergency	R.1985 d.714	18 N.J.R. 215(a)
10:94-5.5	Medicaid Only: deeming of income	17 N.J.R. 2732(a)		
10:94-7, 8, 9	Medicaid Only program for aged, blind and disabled	17 N.J.R. 2340(a)	R.1986 d.5	18 N.J.R. 276(a)
10:100-App. A	Supplemental Security Income payment levels	Emergency	R.1985 d.712	18 N.J.R. 216(a)
10:109	Public Assistance Staff Development Program	18 N.J.R. 22(a)		
10:121-2	Adoption subsidy	18 N.J.R. 24(a)		
10:122-4.4	Child care centers: staff qualification	18 N.J.R. 155(a)		
10:123-3.2	Personal needs allowance: residential health care and boarding homes	17 N.J.R. 2955(a)		
10:129-2	Child abuse prevention	17 N.J.R. 2735(a)	R.1985 d.706	18 N.J.R. 196(a)
	(TRANSMITTAL 34, dated November 18, 1985)			
CORRECTIONS—TITLE 10A				
10A:4	Inmate discipline	18 N.J.R. 27(a)		
10A:31-3.7, 3.12	Adult county facilities: new inmate processing	17 N.J.R. 2229(a)	R.1985 d.604	17 N.J.R. 2901(a)
10A:31-3.12, 3.15	Adult county facilities: medical screening of new inmates	17 N.J.R. 2343(a)		
10A:31-3.12, 3.15	Medical screening of new inmates in county facilities: public hearing	17 N.J.R. 2955(b)		
10A:34	County correctional facilities	17 N.J.R. 2525(a)		
	(TRANSMITTAL 11, dated May 20, 1985)			
INSURANCE—TITLE 11				
11:1-18	Approval of business names	17 N.J.R. 41(a)	R.1986 d.10	18 N.J.R. 278(a)
11:1-19	Uniform registration of branch offices	17 N.J.R. 42(a)	R.1986 d.11	18 N.J.R. 280(a)
11:1-20	Property and casualty/liability coverage: cancellations, nonrenewals and mid-term premium increases	17 N.J.R. 2460(a)	R.1985 d.627	17 N.J.R. 2978(b)
11:1-20, 22	Cancellation and nonrenewal of property and casualty/liability policies	17 N.J.R. 2956(a)		
11:1-20.1	Property and casualty/liability coverage	Emergency	R.1985 d.626	17 N.J.R. 2915(a)
11:1-21	Property/casualty insurers: preparation of annual loss reserve opinions	17 N.J.R. 2596(a)	R.1985 d.711	18 N.J.R. 196(b)
11:2-19	Approval of insurance schools and company training programs	16 N.J.R. 2920(b)	R.1985 d.608	17 N.J.R. 2901(b)
11:2-19.2	Continuing education	18 N.J.R. 44(a)		
11:2-20	License renewal: continuing education requirement	17 N.J.R. 2962(a)		
11:3-10	Auto physical damage claims	16 N.J.R. 3170(a)	R.1985 d.629	17 N.J.R. 2988(a)
11:3-17	Automobile rate filings	16 N.J.R. 2936(a)	R.1985 d.609	17 N.J.R. 2905(a)
11:3-20	Reporting excess profits	17 N.J.R. 370(a)		
11:3-20	Automobile insurers: financial disclosure and excess profit reporting	17 N.J.R. 2597(a)		
11:3-21	Reduced PIP premium charges	16 N.J.R. 3286(a)	R.1985 d.654	18 N.J.R. 89(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 887(a)		
11:4-2	Replacement of life insurance and annuities	17 N.J.R. 2344(a)		
11:4-20	Coverage of the handicapped	18 N.J.R. 44(b)		
11:4-24	Smoker and nonsmoker mortality tables	17 N.J.R. 2348(a)	R.1985 d.617	17 N.J.R. 2907(a)
11:4-26	Annuity mortality tables	17 N.J.R. 2349(a)	R.1985 d.616	17 N.J.R. 2908(a)
11:4-27	Reporting of liquor law liability loss experience	18 N.J.R. 45(a)		
11:5-1.3	Licensing of real estate brokers and salespeople	17 N.J.R. 2350(a)		
11:5-1.15	Real estate advertising	17 N.J.R. 2351(a)		
11:5-1.15, 1.25	Advertising of real estate; sale of interstate property	17 N.J.R. 666(a)		
11:5-1.20	Payment of fees prescribed by Real Estate License Act	17 N.J.R. 2353(a)		
11:5-1.28	Approved real estate schools: requirements	17 N.J.R. 376(a)		
11:16	Provider verification of services	17 N.J.R. 47(a)	R.1986 d.13	18 N.J.R. 281(a)
11:17-1	Surplus lines insurance guaranty fund surcharge	17 N.J.R. 1045(b)		
	(TRANSMITTAL 32, dated November 18, 1985)			
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12:16-4.8	Determining employee's 1986 taxable wage base	17 N.J.R. 2850(a)	R.1986 d.23	18 N.J.R. 284(a)
12:16-4.10	Temporary disability payments under private plans	17 N.J.R. 2850(b)	R.1986 d.21	18 N.J.R. 284(b)
12:16-5.2	Due dates of employer's combined Forms UC-27/WR-30	17 N.J.R. 2851(a)	R.1986 d.22	18 N.J.R. 285(a)
12:17-10	Refund for unemployment benefits	17 N.J.R. 2525(b)	R.1985 d.657	18 N.J.R. 91(a)
12:17-11	Unemployment compensation and pension offset	17 N.J.R. 2736(a)	R.1985 d.718	18 N.J.R. 285(b)
12:70	Field sanitation for seasonal farm workers	17 N.J.R. 1860(a)		
12:105	Board of Mediation: arbitration	17 N.J.R. 2526(a)	R.1985 d.702	18 N.J.R. 198(a)
12:120-1.1, 4.2, 4.4, 4.8, 5.2, 5.4, 5.7, 6.1, 6.3, 6.11	Asbestos licenses and permits	18 N.J.R. 156(a)		
12:235	Practice and procedure before Division of Workers' Compensation	17 N.J.R. 2081(a)		
	(TRANSMITTAL 26, dated November 18, 1985)			
COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A				
12A	Departmental rules; small business set-aside contracts	16 N.J.R. 1955(a)	R.1985 d.421	17 N.J.R. 2683(a)
LAW AND PUBLIC SAFETY—TITLE 13				
13:4	Division on Civil Rights: practice and procedure	17 N.J.R. 2682(a)	R.1985 d.697	18 N.J.R. 198(a)
13:20-25	Approval of motor vehicle safety glazing materials and other equipment	18 N.J.R. 47(a)		
13:20-32.16	Motor vehicle reinspection centers	17 N.J.R. 676(a)		
13:20-33.1	Motor vehicle reinspection centers: fees for initial inspections	18 N.J.R. 158(a)		
13:20-33.6	Glazing inspection standards for motor vehicles	17 N.J.R. 894(a)		
13:20-36.1, 36.2	Special National Guard Plates	17 N.J.R. 2602(a)	R.1985 d.678	18 N.J.R. 203(a)
13:21-5.11	Registration of vehicles subject to Federal Heavy Vehicle Use Tax	17 N.J.R. 2737(a)		
13:21-7	Student driver permits	18 N.J.R. 48(a)		
13:21-8.2	Photo IDs and driver license application procedure	18 N.J.R. 49(a)		
13:21-15.6	Auto dealers: acceptance of altered title documents	17 N.J.R. 169(a)	R.1985 d.699	18 N.J.R. 203(b)
13:21-20	Motor home title certificates	17 N.J.R. 2353(b)	R.1985 d.644	17 N.J.R. 2991(a)
13:27	Rules of Board of Architects	17 N.J.R. 2851(b)		
13:29-1.4	Change of address by licensed accountants	17 N.J.R. 1639(a)	R.1985 d.695	18 N.J.R. 204(a)
13:29-1.11	Fee for CPA certificate	17 N.J.R. 2092(a)	R.1985 d.700	18 N.J.R. 204(b)
13:29-2.1	Applicants for registered municipal accountant's test	17 N.J.R. 2092(b)	R.1985 d.696	18 N.J.R. 204(c)
13:30-8.1	Board of Dentistry: fee schedule	17 N.J.R. 378(a)		
13:35-2.4	Approval of colleges of chiropractic	17 N.J.R. 2231(b)	R.1985 d.631	17 N.J.R. 2991(b)
13:35-2.15	Physician-nurse anesthetist standards	17 N.J.R. 796(a)		
13:35-3.11	Licensure of foreign medical school graduates	18 N.J.R. 50(a)		
13:35-4.2	Termination of pregnancy	17 N.J.R. 2738(a)	R.1986 d.25	18 N.J.R. 286(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
13:35-6.4	Pre-proposal: professional conduct of Medical Board licensees	17 N.J.R. 894(b)		
13:37-1.4	Nursing licensees: reporting unlawful conduct	17 N.J.R. 2232(a)	R.1985 d.607	17 N.J.R. 2908(b)
13:37-6.2	Delegation of nursing tasks by RPNs	17 N.J.R. 2354(a)		
13:38-3.2	Board of Optometrists: reexamination	17 N.J.R. 677(a)		
13:39-3.10	Practice of pharmacy: qualifying examinations	17 N.J.R. 2528(a)	R.1985 d.670	18 N.J.R. 92(a)
13:39A-1	Board of Physical Therapy: organization and administration	17 N.J.R. 2355(a)		
13:39A-2	Authorized practice by physical therapists	17 N.J.R. 2356(a)		
13:39A-3	Unlawful practices by physical therapists	17 N.J.R. 2358(a)		
13:39A-3.2	Pre-proposal: fee splitting and kickbacks by physical therapists	17 N.J.R. 2360(a)		
13:39A-4	Unlicensed practice of physical therapy	17 N.J.R. 2361(a)		
13:39A-5	Physical therapy applicants: required credentials	17 N.J.R. 2362(a)		
13:40-1, 2	Title block contents on drawings, site plans and land surveys	17 N.J.R. 2602(b)	R.1985 d.694	18 N.J.R. 205(a)
13:40-6.1	Professional engineers and land surveyors: application, examination, and licensing fees	17 N.J.R. 2860(a)		
13:41-4	Board of Professional Planners: readopt preparation of site plan rules	17 N.J.R. 1240(a)		
13:42-1.5	Psychological Board licensees: notification of current address	17 N.J.R. 896(a)	R.1985 d.621	17 N.J.R. 2909(a)
13:44-1.2, 1.3, 1.4, 2.4, 2.9, 2.14, 2.15, 6	Veterinarian licensure	17 N.J.R. 1739(a)	R.1985 d.622	17 N.J.R. 2909(b)
13:44C-1.1	Audiology and Speech Language Pathology Advisory Committee: fees and charges	17 N.J.R. 1062(a)		
13:44D	Public moving and warehousing	17 N.J.R. 1382(a)		
13:45A-2	Motor vehicle advertising practices	17 N.J.R. 2861(a)		
13:45A-14	Unit pricing in retail establishments	17 N.J.R. 2232(b)	R.1985 d.643	17 N.J.R. 2991(c)
13:45A-24	Sale of grey market merchandise	17 N.J.R. 2866(a)		
13:47B-1.20	Weights and measures: National Bureau of Standards Handbook 44	17 N.J.R. 2233(a)	R.1985 d.636	17 N.J.R. 2993(a)
13:47B-1.24	Weights and measures: central registry for security sealing devices	17 N.J.R. 2234(b)	R.1985 d.638	17 N.J.R. 2993(b)
13:47C-3.6	Standard for treated lumber	17 N.J.R. 2234(b)	R.1985 d.645	17 N.J.R. 2993(c)
13:48	Charitable fund raising	17 N.J.R. 1244(a)	R.1985 d.698	18 N.J.R. 205(b)
13:54	Regulation of firearms businesses	18 N.J.R. 51(a)		
13:70-4.1, 4.17, 4.19, 4.20, 4.21	Thoroughbred racing: fingerprint checks and licensing	17 N.J.R. 2362(a)	R.1985 d.639	17 N.J.R. 2994(a)
13:70-4.15	Thoroughbred racing: farms and training centers	17 N.J.R. 1393(a)	R.1985 d.635	17 N.J.R. 2995(a)
13:70-6.57	Thoroughbred rules: workout program	17 N.J.R. 2529(a)	R.1985 d.663	18 N.J.R. 92(b)
13:70-14A.11	Thoroughbred racing: urine testing of track personnel	17 N.J.R. 1640(a)	R.1985 d.602	17 N.J.R. 2912(a)
13:70-14A.11	Thoroughbred racing: urine testing and confidentiality of information	17 N.J.R. 2363(a)	R.1985 d.641	17 N.J.R. 2996(a)
13:71-7.1	Harness racing: fingerprint checks and licensing	17 N.J.R. 2364(a)	R.1985 d.640	17 N.J.R. 2996(b)
13:71-7.26	Harness racing: farms and training centers	17 N.J.R. 1393(b)	R.1985 d.637	17 N.J.R. 2996(c)
13:71-18.2	Harness racing: urine testing of track personnel	17 N.J.R. 1641(a)	R.1985 d.603	17 N.J.R. 2913(a)
13:71-18.2	Harness racing: urine testing and confidentiality of information	17 N.J.R. 2364(b)	R.1985 d.642	17 N.J.R. 2997(a)
13:75-1.5	Violent crimes compensation: filing of claims	17 N.J.R. 2010(b)	R.1985 d.630	17 N.J.R. 2998(a)
13:76-1.2, 1.3, 3.2, 4.1	Arson investigators	17 N.J.R. 2011(a)	R.1985 d.679	18 N.J.R. 211(a)

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PUBLIC UTILITIES—TITLE 14

14:1-1, 6	BPU: general provisions; petitions	17 N.J.R. 2235(a)	R.1985 d.624	17 N.J.R. 2998(b)
14:3-4.7	Adjustment of utility bills	17 N.J.R. 2236(a)		
14:5-3	Electric meters	17 N.J.R. 2237(a)	R.1985 d.625	17 N.J.R. 2998(c)
14:6-1.1	Intrastate transportation of natural gas	17 N.J.R. 2740(a)		
14:10-5	Inter LATA telecommunications carriers	17 N.J.R. 2012		
14:18-11	Pre-proposal: Renewal of CATV municipal consents and certificates of approval	17 N.J.R. 1394(a)		

(TRANSMITTAL 25, dated September 16, 1985)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
ENERGY—TITLE 14A				
14A:20	Energy conservation planning and evaluation	16 N.J.R. 3293(a)	R.1985 d.619	18 N.J.R. 290(a)
14A:21	Home Energy Savings Program	17 N.J.R. 2365(a)	R.1985 d.632	17 N.J.R. 2998(d)
	(TRANSMITTAL 16, dated October 21, 1985)			
STATE—TITLE 15				
15:10	Election rules	17 N.J.R. 2381(a)		
	(TRANSMITTAL 15, dated August 19, 1985)			
PUBLIC ADVOCATE—TITLE 15A				
	(TRANSMITTAL 1, dated March 20, 1978)			
TRANSPORTATION—TITLE 16				
16:22	Urban revitalization, special demonstration and emergency project rules	17 N.J.R. 2385(a)	R.1986 d.3	18 N.J.R. 304(a)
16:28A-1.2, 1.10, 1.15, 1.18, 1.19, 1.21, 1.23, 1.36, 1.46, 1.67	Bus stops and parking restrictions throughout State	17 N.J.R. 2742(a)	R.1986 d.14	18 N.J.R. 304(b)
16:28A-1.7, 1.9, 1.21, 1.33, 1.34, 1.39, 1.40	Bus stop zones in Atlantic, Bergen, Camden, Gloucester, Ocean and Salem counties	18 N.J.R. 158(b)		
16:28A-1.32, 1.34, 1.36, 1.40, 1.42	Additional parking restrictions in Essex, Monmouth, Cumberland, Camden and Warren counties	17 N.J.R. 2744(a)	R.1986 d.16	18 N.J.R. 307(a)
16:28A-1.71	Bus stops along Route 67 in Fort Lee	17 N.J.R. 2967(a)		
16:29-1.49, 1.50, 1.51	No passing zones on Routes 26, 91 and 35	17 N.J.R. 2967(b)		
16:31-1.4	No left turn on Route 35 in Old Bridge, Aberdeen and Keyport	17 N.J.R. 268(a)	R.1986 d.15	18 N.J.R. 308(a)
16:32-2.3	Temporary exemptions from Federal bridge formula	17 N.J.R. 1868(a)	R.1985 d.672	18 N.J.R. 212(a)
16:44-1.2	Classification of project bidders	17 N.J.R. 2746(a)		
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