

NEW JERSEY REGISTER



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***MOST RECENT UPDATE TO ADMINISTRATIVE CODE: APRIL 21, 1986.**
See the Register Index for Subsequent Rulemaking Activity.
NEXT UPDATE WILL BE DATED MAY 19, 1986.

185 W. State St.
Trenton, N.J.

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RULE PROPOSALS

Interested persons may submit, in writing, information or arguments concerning any of the following proposals until **July 16, 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. 1:30-4.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice.

BANKING

(a)

DIVISION OF BANKING

Leeway Application: Confidential Treatment

Proposed New Rule: N.J.A.C. 3:11-11.13.

Authorized By: Mary Little Parell, Commissioner, Department of Banking.

Authority: Executive Order No. 9 (1963); N.J.S.A. 17:1-8.1 and 17:9A-24.13 (P.L. 1985, c.168).

Proposal Number: PRN 1986-241.

Submit comments by July 16, 1986 to:

Roger F. Wagner
Deputy Commissioner
Division of Banking
CN 040
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The legislature, in 1985, expanded the general investment powers of savings banks and commercial banks with passage of Senate Bill Number 1085 which was signed into law by Governor Kean on May 17, 1985 as Chapter 168, P.L. 1985 (N.J.S.A. 17:9A-24.12), commonly referred to as the "Leeway Investment Bill."

The purpose of the bill is to provide the aforementioned institutions with new investment powers beyond the more traditional powers which are specifically set out in the law. The law sets limitations on the amount of any one individual investment and an overall limitation on the total dollar volume an institution may place in these "leeway investments."

As a further safeguard, the Commissioner of Banking, pursuant to the authority granted in N.J.S.A. 17:9A-24.13, proposed new rules (N.J.A.C. 3:11-11) on January 21, 1986 at 18 N.J.R. 132(a). These rules set out several areas of investments for the guidance of these institutions. The rules also set out a procedure for approval by the Commissioner of other investments. Additionally, record keeping rules are set out and it is made clear that subsidiary companies are subject to examination by the banking department.

In response to the proposed new rules N.J.A.C. 3:11-11, commentators asserted the need to keep applications and other documents regarding leeway investments which require the Commissioner's approval confiden-

tial prior to that approval. The Commissioner is cognizant of the dynamics of the financial marketplace and recognizes the need to maintain the confidentiality of records that touch upon trade or business secrets. To this end, the Commissioner is proposing this new rule.

Social Impact

With the adoption of this rule, the approval process as structured recognizes the need for proper business planning and balanced competition. Meeting these concerns will provide the institutions greater flexibility to expand into other areas where it is deemed they may offer increased and improved services to the public, consistent with safety and soundness.

Economic Impact

Confidentiality of the approved process will enable the banking institutions to properly plan and forecast expanding sources of income. Proper planning is a fundamental step to compete successfully in the marketplace. Stockholders and depositors should benefit from this potential source of new revenues which could augment dividends and/or interest on deposits. The institution itself, through increased earnings, should be able to further expand services to customers resulting in continued economic growth in the communities they serve. No economic impact is foreseen as to the Department.

Full text of the proposed new rule follows:

3:11-11.13 Leeway application: confidential treatment

(a) Prior to the Commissioner's approval or denial, every leeway application and any additional information made part of the application procedure and approval process provided in N.J.A.C. 3:11-11.9 and 3:11-11.10 shall not be deemed to be public records subject to the provisions of N.J.S.A. 47:1A-12, The Right to Know Law. These records maintained under the supervision of the Commissioner shall be confidential and shall not be subject to inspection and examination and available for copying.

(b) The confidential documents shall be made available to the public upon the lapse of 30 days after the Commissioner has determined whether to approve or deny an application.

NEW JERSEY REGISTER

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COMMUNITY AFFAIRS**DIVISION OF HOUSING AND DEVELOPMENT**

The following proposals are authorized by Leonard S. Coleman, Commissioner, Department of Community Affairs.

(a)**Uniform Fire Code; Fire Safety Code
Fire Code Enforcement**

Proposed Amendments: N.J.A.C. 5:18-2.5, 2.7, 2.11, 2.14, 3.2, 4.1, 4.7, 4.9, 4.10, 4.11, 4.12, 4.13, and 4.18

N.J.A.C. 5:18A-2.3, 4.3 and 4.4

Proposed New Rule: N.J.A.C. 5:18-4.17

Authority: N.J.S.A. 52:27D-198.

Proposal Number: PRN 1986-239.

A public hearing concerning this proposal will be held on July 30, 1986 at 10:00 A.M. at the New Jersey State Museum Auditorium, West State Street, Trenton, New Jersey.

Submit comments by August 16, 1986 to:

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

The agency proposal follows:

Summary

This proposal represents a substantial revision of those portions of the Uniform Fire Code, Fire Safety Code, proposed May 20, 1985 at 17 N.J.R. 1161(a) which were not included in the adoption of the Code of June 16, 1986 which affected a limited group of buildings. See this issue of the Register for the related Notice of Adoption. Included in this proposal is all of the related adoption so that the State Fire Safety Code could be read in its entirety, with the proposed language and adopted text properly juxtaposed. Several amendments to subchapters 1, 2 and 3 are included with this proposal, as well as amendments to N.J.A.C. 5:18A, Regulations for Fire Code Enforcement.

5:18-2.5 Provision has to be made in the code for an application for a certificate of inspection, a form mandated by the Uniform Fire Safety Act, N.J.S.A. 52:27D-205(c).

5:18-2.7 Requirements for obtaining a permit to store or use fireworks are duplicated in the Code. This will eliminate the least restrictive requirements.

5:18-2.11 The proposed draft more clearly sets forth the appeal options and requirements. Changes are proposed for appeals in imminent hazard situations to provide greater consistency with due process considerations and to establish more realistic requirements for timely decisions.

5:18-2.14 With the proposed amendment of 5:18-2.11, this section becomes necessary.

5:18-3.2 A definition of "bonfire" is provided to eliminate confusion between Uniform Fire Code and Department of Environmental Protection permit requirements. A clarification of kerosene can color provisions brings this section in line with recently developed national standards. A requirement for fire drills in certain occupancies, mandated by the Uniform Fire Safety Act, N.J.S.A. 52:27D-198(b), is incorporated.

5:18-4.1 Amendments to this section define additional buildings to be affected in the future by provisions of the Code. It is the Department's intention to establish June 16, 1988 as the effective date for buildings described in subsection (c) of this section and to establish June 16, 1989 as the effective date for buildings described in subsection (d) of this section, thereby phasing in requirements of this subchapter over a three year period.

5:18-4.7 Automatic fire suppression systems are to be required in certain institutional uses (Use Group I); in certain high hazard buildings or portions of buildings (Use Group H); in assembly uses exceeding 12,000 square feet when located in residential buildings (Use Group A-3 in Use Group R-1 or R-2 structures); in windowless stories of buildings of any Use Group when that story is not provided with access for firefighting purposes; and in some public or common portions of hotels (Use Group R-1) that not have complete automatic suppression systems.

5:18-4.9 The existing automatic fire alarm requirements for hotels and multiple dwellings, currently enforced by the Bureau of Housing Inspection, Division of Housing and Development, Department of Community Affairs are incorporated; automatic fire alarm requirements for child day-care centers and schools, up to grade 12, are included.

5:18-4.10 Manual fire alarms are to be required in schools up to the 12th grade, and in hotels and multiple dwellings which may be occupied by 25 or more people and have 10 or more apartments or guest rooms.

5:18-4.11 In all buildings other than one- and two-family homes and certain other small buildings meeting specified requirements, at least two exits are required from every floor than can be occupied by 500 or fewer people, three exits from every floor that can be occupied by 501 to 1000 people and at least four exits from every floor that can be occupied by more than 1000 people. The exit capacity must be adequate for the number of occupants. Requirements are established for exitway illumination and emergency lighting. Door requirements are established.

5:18-4.12 With certain exceptions, interior finish of walls and ceilings is required to conform to flame spread ratings determined by standard ASTM E84. Fire retardant coatings may be applied to finishes to bring them into compliance.

5:18-4.13 With certain exceptions, interior exit stairways are required to be enclosed with approved fire resistive assemblies or fire barriers. Many existing assemblies are expected to comply.

5:18-4.18 Requirements are established for high rise buildings which include automatic fire suppression in hotel and mercantile buildings, central station and communication systems in business and hotel buildings, heat and smoke detection capability in exhaust and recirculation systems, emergency recall and control systems in elevators and smoke barriers in certain elevator lobbies.

Social Impact

The proposed amendments are intended to result in substantially increased fire protection for people in buildings which antedate the State Uniform Construction Code. To the extent that the various required protective measures impede the spread of fire and smoke, lives will be saved and damage to property will be limited. Upgraded exit requirements will facilitate both escape and rescue by firefighters.

Economic Impact

The economic impact on owners of many older buildings will be substantial. Some buildings will have to be significantly altered to provide adequate exitways and required enclosures and barriers. Installation of fire suppression systems in buildings where they were not previously required may also be expected to be costly. The Department and the Fire Safety Commission believe, however, that the requirements imposed by this subchapter are necessary if we are to carry out the mandate of the Uniform Fire Safety Act and substantially reduce the incidence of loss of life and property from fire in this State.

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

5:18-2.5 Required inspections

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

(c) [Where a use is found to be free of violation, the enforcing agency shall issue a certificate of inspection, which shall be posted by the owner of the use in a conspicuous location therein.]

Within 30 days following each annual and every other quarterly inspection of a life hazard use, the owner shall file an application for a certificate of inspection on forms provided by the Local Enforcing Agency. Forms shall be provided either before or at the time of inspection. The form shall request, and the owner shall provide, the information specified below, or where applicable, certify that it remains as stated on the registration survey. The form shall be returned to the local enforcing agency which shall review and forward it to the Bureau.

1. Building owner's full name, business and residential addresses, and respective telephone number. If complete agent information is supplied, the owner need not supply residential information.

2. The full name, business and residential addresses, and telephone numbers of an agent authorized to accept service of documents including rulings, orders or notices.

3. For partnerships, the name and business addresses of all general partners.

4. For corporations, the name, residential and business addresses, and telephone number of the registered agent. In addition, if it is not a publicly traded corporation, the name, business and residential addresses, and telephone numbers of each officer, director, or stockholder holding 10% or more of the stock.

5. If the fire official or local enforcing agency has identified life hazard uses within the building, and such uses are separately owned, the use-owner's full name, residential address, and business and residential telephone numbers, as well as the name, business and residential addresses of any person authorized to accept service of rulings, actions, orders or notices. If complete agent information is supplied, the use owner need not supply residential information.

(d) A certificate of inspection shall not be issued until the application is properly completed and reviewed and any violations cited have been corrected. The certificate of inspection shall be posted by the owner of the use in a conspicuous location therein.

5:18-2.7 Permits required

(a) (No change.)

(b) Permits shall be obtained from the fire official for any of the following listed activities or uses. Permits shall at all times be kept in the premises designated therein and shall at all times be subject to inspection by the fire official.

1. (No change.)

2. Type 1 permit:

i.-vi. (No change.)

vii. The possession or use of [fireworks,] explosives or blasting agents, other than model rocketry engines regulated under N.J.A.C. 12:194;

viii-ix. (No change.)

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

5:18-2.11 Appeals

(a) A ruling, action, order or notice of a local enforcing agency may be appealed to the municipal or county construction board of appeals in a manner pursuant to section 9 of the State Uniform Construction Code Act. P.L. 1975, c. 217, having jurisdiction in the municipality in which the building, structure or premises is located.

1. Copies of a letter requesting an administrative hearing before a Construction Board of Appeals shall be sent to the offices of the Construction Board of Appeals and to the local enforcing agency.

(b) In any case in which the Department of Community Affairs serves as enforcing agency, a ruling, action, order or notice of the Commissioner may be appealed to an administrative hearing which shall be conducted by the Office of Administrative Law, with the Commissioner or his designee issuing the final decision.

1. A request for an administrative hearing to appeal a ruling, action, order or notice of the Commissioner shall be addressed to: Hearing Coordinator, Division of Housing and Development, Department of Community Affairs, CN 804, Trenton, NJ 08625.

(c) All hearing requests, whether to a construction board of appeals or to the Department, shall be made within 15 days after date of service by the person making the appeal of the ruling, action, order or notice complained of.

(d) If an owner shall appeal an order to vacate, close or move a building, structure or premises or to abate a violation within a specified period of time and such order was issued in response to an imminent hazard to life safety, a hearing shall be conducted and a final decision issued within 48 hours of receipt of the hearing request by the Construction Board of Appeals or the Department. If no hearing is held by a construction board of appeals within 48 hours of receipt of a request, an owner may apply to the Department for a hearing. Failure to issue a decision shall constitute a denial of an owner's appeal.]

(a) The person aggrieved may appeal any enforcement action including rulings, orders and notices by submitting a written hearing request as set forth herein. Either the owner of the premises or of the use, or his authorized agent, may be a person aggrieved.

1. If from the act of a local enforcing agency, the request shall be made to the Construction Board of Appeals in the municipality where the building, structure or premises is located. If no such Board exists, then the request shall be to the County Construction Board of Appeals in the county where the building, structure or premises is located. At the time made, a copy of the request shall be sent to the local enforcing agency.

2. If from the act of the Department serving as the local enforcing agency, the request shall be made to the Hearing Coordinator, Division of Housing and Development, Department of Community Affairs, CN 804, Trenton, New Jersey 08625.

3. All hearing requests shall be signed by a proper party and shall include:

i. The date of the act which is the subject of the appeal;

ii. The name and status of the person submitting the appeal;

iii. The specific violations or other act claimed to be in error; and

iv. A concise statement of the basis for the appeal.

(b) Hearing requests shall not be valid unless submitted within 15 days

after service of a ruling, order or notice, except in cases of imminent hazards.

(c) In imminent hazard cases, except in emergent circumstances, the owner shall have a period of 24 hours to request a hearing before the order to close, vacate or remove shall be effective. In emergent circumstances, orders may be effective immediately. Hearing requests within the 24 hour period may be made orally to the person designated on the form served but shall be written in accordance with (a)3 above and served on the enforcing agency at the hearing. At the expiration of 24 hours, if the action required has been taken, the owner shall have a period of 15 days to request a hearing.

1. If a request is made within 24 hours, a hearing shall be conducted and a final decision issued within 48 hours of receipt of the hearing request.

2. If the request is to a Construction Board and no final decision is issued within two working days, thereafter, written application may be made to the Department at the address specified in (a)2 above for a hearing. The application shall clearly state that it is an imminent hazard appeal and shall identify the Local Enforcing Agency and Local Construction Board. In such case, a hearing shall be held and a final decision issued within three working days from receipt of the request.

3. If the hearing request is made in accordance with the 15 day provision, a hearing shall be held and a final decision issued within seven working days.

5:18-2.14 Imminent hazards

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

[(c) If the owner of a building, structure or premises denies that a violation justifying an order pursuant to this section to vacate, close, remove, or abate within a specified time exists, the owner may apply to the Director, Division of Housing and Development or Construction Board of Appeals, as the case may be, for a reconsideration hearing. The hearing shall be conducted, and a final decision issued, within 48 hours of the receipt of the request. Failure to issue a decision shall constitute denial of the owner's appeal; provided that, in the case of an appeal to the construction board of appeals, if the hearing is not held within two working days of the receipt of the request, the owner may apply to the Director, Division of Housing and Development for an administrative hearing and the decision shall be rendered by the commissioner within two working days of the receipt of the application for the hearing.]

5:18-3.2 Modifications

(a) The following articles or sections of the State Fire Prevention Code are modified as follows:

1. (No change.)

2. Article 2 ("Definitions") is amended as follows:

i. (No change.)

ii. Section [F-200.0] F-201.0 ("General Definitions") is amended as follows:

(1)-(5) (No change.)

(6) The term "bonfire" is added and is defined as "a large, public, open-air fire kindled to mark or highlight some public event."

3. Article 3 ("General Precautions Against Fire") is amended as follows:

i.-vii. (No change.)

viii. The following new sections F-316.0, F-316.1, F-316.2, F-316.2.1, F-316.2.2, F-316.2.3, and F-316.3 are added:

F-316.0-F-316.2.1 (No change.)

F-316.2.2 **Portable containers:** Portable containers for kerosene shall be either of a plastic or metal construction with fill and vent openings. The container shall be **predominantly medium blue** [with white lettering]. The word "Kerosene" shall be displayed around the perimeter of the container.

F-316.2.3-F-316.3 (No change.)

ix. (No change.)

x. The following new sections F-318.0, F-318.1, F-318.2, F-318.3 and F-318.4 are added:

Section F-318.0 Fire Drills

Section F-318.1 **General:** Fire Drills shall be held in buildings and parts thereof, when of educational and institutional uses and in dormitories, having an occupancy load of 50 or more, that serve educational uses.

Section F-318.2 **Frequency:** Fire Drills shall be held at least once a month in educational uses, at least twice annually in educational dormitories, and at least once every three months on each work shift in institutional uses. During severe weather, fire drills may be postponed.

Section F-318.3 **Records:** A record of fire drills shall be kept on the premises and shall be made available to the fire official upon request. Such records shall contain the following information:

(1) Date of drill;

(2) Time of drill;

(3) Weather condition at time of evacuation;

- (4) Number of occupants evacuated;
- (5) Total time for evacuation; and
- (6) Any other information relevant to the drill.

Section F-318.4 Evacuation: In educational uses and dormitories, fire drills shall include complete evacuation of all persons from the building. In institutional uses, fire drills shall be conducted to familiarize operating personnel with their assigned positions of emergency duty. Complete evacuation of occupants from the building at the time of the fire drill shall be required in institutional uses only where it is practicable and does not involve moving or disturbing persons under medical care or restraint.

SUBCHAPTER 4. FIRE SAFETY CODE

5:18-4.1 Code adopted/Scope

(a) Pursuant to authority of the Uniform Fire Safety Act (P.L. 1983, c.383, N.J.S.A. 52:27D-192 et seq.), the Commissioner hereby adopts this subchapter as the State Fire Safety Code.

(b) The following buildings shall be in compliance with all applicable requirements of this subchapter by June 16, 1987.

1. Theaters incorporating a raised stage, platform, or thrust stage, proscenium curtain, fixed or portable scenery loft, lights, mechanical appliances or other theatrical accessories and equipment, equipped with fixed seats; and which are classified as Use Group A-1-A in accordance with the Uniform Construction Code.

2. Night clubs, dance halls, discotheques without a theatrical stage and which are classified as Use Group A-2 in accordance with the Uniform Construction Code.

3. Eating and drinking establishments which are primarily drinking establishments with a maximum permitted occupancy of 200 or more, and which are classified as Use Group A-3 in accordance with the Uniform Construction Code.

4. Amusement buildings and places of amusement designed to disorient, reduce vision, present barriers, or otherwise impede the free flow of traffic, such as haunted houses, fun houses, tunnels of love, and similar uses and which are classified as Use Group A-3 in accordance with the Uniform Construction Code.

5. Institutional buildings and similar facilities including hospitals and long-term care facilities, which house people suffering from physical limitations due to age, health or handicaps and which are classified as Use Group I-2 in accordance with the Uniform Construction Code.

6. Institutional buildings or similar facilities including acute alcoholism treatment, out-patient surgery, renal dialysis facilities, abortion clinics and birthing centers, and which are classified as Use Group I-2 in accordance with the Uniform Construction Code.

7. Day nurseries, children's shelter facilities, residential child care facilities and similar facilities with children below the age of 2½ years, and which are classified as Use Group I-2 in accordance with the Uniform Construction Code.

(c) The following buildings shall be in compliance with all applicable requirements of this subchapter by the first anniversary of the subchapter's effective date.

1. High rise structures as defined in N.J.A.C. 5:18-1.5.
2. Prisons or other facilities where residents, occupants or inmates are kept under restraint and which are classified as Use Group I-3 in accordance with the Uniform Construction Code.
3. Institutional and similar facilities, including acute alcoholism treatment, outpatient surgery, renal dialysis facilities, abortion clinics, and birthing centers which are classified as Use Group B in accordance with the Uniform Construction Code.
4. Residential health care facilities, boarding homes and similar facilities which are classified as Use Group I-1 in accordance with the Uniform Construction Code.
5. Eating and drinking establishments which are primarily eating establishments with a maximum permitted occupancy of 200 or more and which are classified as Use Group A-3 in accordance with the Uniform Construction Code.
6. Hotel or motel structures four stories or more in height or exceeding 100 rooms which have interior means of egress and which are classified as Use Group R-1 in accordance with the Uniform Construction Code.
7. Any story which meets the criteria of N.J.A.C. 5:18-4.7(h) and which has a maximum permitted occupancy of 50 or more persons, regardless of Use Group classification.
8. Motion picture theaters without a theatrical stage and which are classified as Use Group A-1-B in accordance with the Uniform Construction Code.
9. Retail stores and other mercantile uses which exceed 12,000 square feet in gross floor area and which are classified as Use Group M in accordance with the Uniform Construction Code.

10. Stadiums, race tracks and other similar exterior places of assembly with grandstands and which are classified as Use Group A-5 in accordance with the Uniform Construction Code.

11. Industrial and commercial uses which incorporate any hazardous operation or storage of combustible material as described in N.J.A.C. 5:18-2.4(c)12.

12. Buildings used for the storage and use of materials and substances as described in N.J.A.C. 5:18-2.4(c)13.

13. Buildings in which flammable cleaning solvents are used for dry cleaning purposes and which are classified as Use Group H in accordance with the Uniform Construction Code.

14. Buildings which exceed 12,000 square feet of gross floor area and which have atrium spaces three or more stories in height regardless of Use Group classification.

15. Covered mall structures which exceed 12,000 square feet of gross floor area.

(d) All buildings for which requirements are established in this subchapter and which are not listed in (b) or (c) above shall be in compliance with such applicable requirements of this subchapter by the first anniversary of the subchapter's effective date.

1. Exception to (d) above: Owner-occupied buildings which are classified as Use Group R-3 in accordance with the Uniform Construction Code shall be exempt from the provisions of this subchapter.

5:18-4.2 Compliance with the State Fire Prevention Code and Other Fire Safety Regulations

(a) All buildings which are specifically listed as under the scope of this subchapter as denoted in N.J.A.C. 5:18-4.1 and which are subject to requirements previously established including, without limitation, any requirement of the State Fire Prevention Code (N.J.A.C. 5:18-3.1 et seq.), shall be in compliance with those requirements as of the effective date of this subchapter and shall remain in compliance throughout the life of the structure.

(b) All buildings which are not specifically listed as under the scope of this subchapter as denoted in N.J.A.C. 5:18-4.1 shall continue to be subject to the provisions of applicable existing fire safety requirements as promulgated by the State or local agency having jurisdiction and shall remain in compliance with those requirements throughout the life of the structure.

5:18-4.3 Relation to Uniform Construction Code and other Codes

(a) A building in full compliance with the subcodes adopted pursuant to the Uniform Construction Code Act and Regulations in force at the time of its construction and possessing a valid certificate of occupancy shall not be required to conform to the more restrictive requirements established by this subchapter.

(b) A building in full compliance with the current fire safety requirements of the New Jersey Uniform Construction Code (N.J.A.C. 5:23), as determined by the construction official with the concurrence of the fire subcode official and the fire official, shall not be required to conform to more restrictive requirements established by this subchapter.

1. A determination as to whether a New Jersey Uniform Construction Code requirement involves fire safety shall, in a disputed case, be determined by the Bureau of Construction Code Enforcement after consultation with the Bureau of Fire Safety and with the fire official and with the concurrence of the Director, Division of Housing and Development.

2. For purposes of this subsection, "current fire safety requirements" means requirements set forth in the New Jersey Uniform Construction Code in effect at the time of adoption of the requirement as part of this subchapter.

3. Existing fire suppression, smoke detector and fire alarm systems that meet the intent of NFPA standards and the New Jersey Uniform Construction Code shall be accepted as meeting the requirements of this Code.

(c) The applicability of provisions of this subchapter to existing buildings or structures, identified or classified by the Federal, State or local government authority as historic buildings, shall be determined by the local enforcing agency under the New Jersey Uniform Construction Code in consultation with the fire official, as outlined in Section 513.0 of the Building Officials and Code Administrators International, Inc. (BOCA) Basic/National Building Code, 1984 edition.

(d) A variation previously granted to a provision of an existing code, which provision contains requirements substantially the same as the comparable provision of the Uniform Fire Code shall remain valid, subject to the following conditions:

- i. To be accepted, the variation must have been:
 - i. Granted in writing;
 - ii. Granted through formal process or procedure;
 - iii. Granted upon a finding that equivalent life safety was provided.

2. Notwithstanding the provisions of this section contained above, nothing shall prevent the fire official from making a finding of imminent hazard pursuant to N.J.A.C. 5:18-2.14 or the construction official from making a finding of unsafe building pursuant to N.J.A.C. 5:23-2.32 and requiring correction of such hazard or unsafe condition in accordance with those regulations.

5:18-4.4 Relation to State Fire Prevention Code

The requirements established by this subchapter are in addition to, and not in lieu of, requirements established by the State Fire Prevention Code (N.J.A.C. 5:18-3.1 et seq.).

5:18-4.5 Modifications

(a) Any municipality may, by ordinance, modify this subchapter so as to make it more restrictive or more inclusive; provided, however, that this subchapter shall not be modified so as to be more restrictive than the New Jersey Uniform Construction Code (N.J.A.C. 5:23-1 et seq.) or so as to include one- or two-family, owner-occupied dwellings.

(b) Nothing in this Code shall be construed as preventing any State agency from exceeding provisions of this Code in making improvements to buildings under their jurisdiction, ownership or control when such changes are mandated by or through Federal law or Federal regulations as a condition of funding such agency. Such actions shall not reduce the requirements of these regulations.

5:18-4.6 Pre-existing violations

No violation committed, and no liability, penalty, or forfeiture, either civil or criminal, incurred, prior to the repeal or revision of any regulation or any part thereof by the enactment of this subchapter, shall be discharged, released or affected by the repeal or revision of the regulation or part thereof under which such offense, liability, penalty or forfeiture was incurred, and indictments, prosecutions and actions for such offenses, liabilities, penalties or forfeitures committed or incurred, prior to the effective date of this subchapter, shall be commenced or continued and be proceeded with in all respects as if the regulation or part thereof had not been repealed or revised.

5:18-4.7 Fire suppression systems

(a) All buildings of Use Group A-2 with a permitted occupant load of 50 or more shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

(b) All buildings of Use Group I-1 greater than two stories in height above grade and having an occupant load greater than 20 excluding staff and in which residents have access to rooms above the second story shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

(c) All buildings of Use Group I-2 shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

1. The following are exceptions to (c) above:

i. Buildings of Type I or Type II construction of any height or of Type IIB construction not over one story in height as defined in the Uniform Construction Code.

ii. Day nurseries serving children below 2-1/2 years of age, provided that all the children under 2-1/2 years of age are cared for on the first floor in a room(s) having direct access to approved exits discharging directly to the exterior.

(d) All buildings of Use Group I-3 with an occupant load of six or more shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

1. Exception to (d) above: All buildings of Use Group I-3 not required to be equipped throughout with suppression by these provisions shall be equipped with suppression in all padded cells, boiler rooms, storage and workshop rooms 24 square feet and larger, mechanical equipment and similar rooms.

(e) All buildings or portions thereof of Use Group H shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

(f) All ballrooms, exhibit areas and accessory spaces of Use Group A-3 which exceed 12,000 square feet and are located in buildings of Use Groups R-1 and R-2, shall be equipped with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

1. The following are exceptions to (f) above:

i. Such assembly uses may be subdivided into fire areas not exceeding 12,000 square feet using permanent two-hour fire separation walls with 1-1/2 hour opening protectives. Such walls shall be continuous from the floor to the deck above except that the wall may terminate at the ceiling if the ceiling is part of a fire-resistance rated floor/ceiling or roof/ceiling assembly.

ii. A-3 uses which are completely separated both horizontally and vertically from R-1 and R-2 uses by fire separation walls and floor ceiling assemblies having a fire-resistance rating of not less than 2 hours with approved opening protectives having a fire-resistance rating of not less than 1-1/2 hours. Walls shall be continuous from the floor to the deck above except that the walls shall be permitted to terminate at the ceiling if the ceiling is part of a fire-resistance rated assembly.

(g) All required kitchen exhaust systems used in conjunction with cooking operations which produce grease laden vapors shall be equipped with an automatic fire suppression system designed and installed in accordance with the State Fire Prevention Code and the New Jersey Uniform Construction Code.

1. Exception to (g) above: Suppression shall not be required for systems serving completely enclosed ovens, steam tables, or auxiliary equipment which does not produce grease laden vapors.

(h) In all buildings, an automatic fire suppression system shall be installed throughout all stories, including basements, which are not provided with firefighter access consisting of any combination of 1, 2 or 3 below:

1. Grade level doors providing at least 20 square feet of opening and spaced not more than 150 feet apart; or

2. Panels with minimum dimensions of 20 inches in width by 24 inches in height and constituting a minimum of 20 square feet in every 100 lineal feet of exterior wall; or

i. Panels shall be readily identifiable and shall be readily openable from the outside or shall be glazed with plain flat glass.

3. Enclosed stairwells providing direct access from the exterior to the occupiable space in such story or basement and complying with one of the following:

i. A fire resistance rating of not less than one hour when serving four stories or less; or

ii. A fire resistance rating of not less than two hours when serving more than four stories.

4. The following are exceptions to (h) above:

i. Suppression according to this section shall not be required in basements which do not exceed 2,500 square feet in area or in basements which do not exceed 5,000 square feet in area when subdivided into areas not exceeding 2,500 square feet by walls having a fire resistance rating of not less than two hours with approved opening protectives having a fire resistance rating of not less than 1-1/2 hours. In both cases, such basements shall also be provided with an approved automatic fire alarm system having smoke detectors located in accordance with NFIPA 72E and shall be separated from upper floors by an assembly having a fire resistance rating of not less than two hours.

(i) In all buildings of Use Group R-1, not required by N.J.A.C. 5:18-4.17 to have a complete automatic fire suppression system, all storage and workshop rooms and rubbish, laundry and similar rooms shall be equipped with a suppression system or smoke detector system connected to an approved continuously staffed location in the building. Such systems shall be installed in accordance with the New Jersey Uniform Construction Code.

(j) Fire suppression systems required by this Code shall be supervised by one of the following methods as determined by the fire official:

1. Approved central station system in accordance with NFIPA 71;

2. Approved proprietary system in accordance with NFIPA 72D;

3. Approved remote station system of the jurisdiction in accordance with NJIPA 72C; or

4. Approved local alarm service which will cause the sounding of an alarm in accordance with NFIPA 72A;

5. The following are exceptions to (j) above:

i. Underground gate valves with roadway boxes;

ii. Halogenated extinguishing systems;

iii. Carbon dioxide extinguishing systems;

iv. Dry chemical extinguishing systems; and

v. Limited area sprinkler systems.

5:18-4.8 Standpipe system

(a) All buildings having floors used for human occupancy located more than six stories above grade shall be equipped with wet standpipes. Standpipes shall be located and installed in accordance with the New Jersey Uniform Construction Code except as follows:

1. Standpipe systems shall be capable of accepting a delivery by fire department apparatus of a minimum of 250 gpm at 65 psi to the topmost remote standpipe outlet in buildings equipped throughout with an automatic fire suppression system or a minimum of 500 gpm at 65 psi to the topmost remote standpipe outlet in all other buildings.

2. Hose and hose cabinets shall not be required.

5:18-4.9 Automatic fire alarms

(a) An automatic fire alarm system shall be installed as required below

in accordance with the New Jersey Uniform Construction Code.

1. In all buildings of Use Group I;
 - i. Required alarm systems in buildings of Use Group I must be supervised.

(1) Exception to i above: Automatic fire alarm systems in day nurseries are not required to be supervised.

2. In all buildings of Use Group R-1 and R-2 as follows:

i. Smoke detectors shall be installed and shall be Underwriters Laboratories, Inc. (U.L.), Factory Mutual Research Corporation (F.M.) or other nationally recognized testing laboratory listed ionization or photoelectric type units.

(1) Single station units shall have integral alarms capable of emitting a minimum sound intensity of 85 dbA at a 10 foot distance, an easily seen and activated manual unit test button or approved alternative, and a power source monitor light or trouble signal.

(2) Multiple station units shall be either a series of interconnected single station units or smoke detectors of the self-contained type which are interconnected to a common alarm system.

(3) All units shall be listed, shall meet the requirements of U.L. 217, shall be installed and maintained as per manufacturer's recommendations and shall comply with NFPA No. 72 E or No. 74 standards, except as otherwise provided in this section.

ii. All smoke detectors and/or supervised systems shall be powered by an alternating current (AC) constantly active electric circuit which cannot be deactivated by the operation of any interconnected switching device and shall comply with NFPA-70 (National Electric Code) requirements, except as otherwise provided in this section. All common area smoke detector units and systems shall be on circuitry that is connected into the building owner's electric meter. As an alternative, battery-powered single station units may be installed in dwelling units provided that the following conditions are met:

(1) The owner or his representative shall inspect and clean all units and replace batteries in all units annually or as otherwise required per manufacturer's printed recommendations;

(2) The owner of a multiple dwelling or his representative shall place a tag on each unit and shall place the date of inspection and his initials on the tag.

(A) Entries shall be made on the tag upon initial installation, whenever a change of occupant occurs, when any reported malfunction of units is corrected, and when required maintenance is performed.

(B) An entry made on a tag shall constitute a certification that the unit is operating properly.

(C) Tags shall be affixed so as not to impair the functioning of the unit.

(3) The owner of a hotel or his representative shall inspect each unit whenever a change of occupant occurs and shall clean the unit or replace batteries whenever necessary.

iii. The owner of a multiple dwelling shall supply each occupant with a copy of the manufacturer's printed instructions for the testing of the installed unit(s).

(1) The owner of a multiple dwelling unit who has been notified either by an occupant, or by the fire official, that such occupant is unable to perform the required monthly testing of detector units in his dwelling or have this performed by a member of his household, shall perform such monthly testing.

(2) In all common areas of multiple dwellings and hotels and in dwelling units in hotels, the owner or his representative shall test all smoke detectors and detection systems monthly and maintain them in accordance with manufacturer's recommendations.

(3) Every occupant of a dwelling unit in a multiple dwelling shall test all detector units in his own dwelling unit monthly and report any malfunctions immediately to the building owner. If an occupant is incapable of performing this testing due to a mental or physical impairment, and has no member of his household capable of performing such testing, he shall so notify the owner or his representative.

iv. Dwelling units shall have smoke detectors installed at locations as follows:

(1) Each dwelling unit shall have a minimum of one approved single station smoke detector located in close proximity to each sleeping area.

(A) Smoke detectors shall be located so that the maximum distance from the detector to any sleeping area exit door shall not exceed 10 feet if outside the sleeping area or 15 feet if within the sleeping area.

(B) If any required detector is to be located closer than five feet to a kitchen or bathroom area, it shall be of photoelectric type only.

(2) A basement or cellar having direct access from within a dwelling unit and used solely by the occupants of that unit shall have a minimum of one approved smoke detector. Such basement detector(s) shall be interconnected with other units in the dwelling unless installed prior to the effective date of this subchapter.

(A) At least one detector shall be located on the basement or cellar ceiling as close as possible to the interior stairway opening, or other approved location where the earliest detection of fire would activate the alarm(s).

(B) Basements or cellars that contain utility services or storage space for other dwelling units shall comply with common area requirements.

(3) In any dwelling unit other than a hotel room, rooming unit or efficiency apartment the detector required to be in close proximity to each sleeping area shall be outside of the sleeping area.

v. Common areas shall be required to have an approved system of multiple station units installed as hereinafter provided. In buildings of Use Group R-1, less than four stories in height above grade, other than school dormitories for students up to and including the 12th grade, and in buildings of Use Group R-2 less than six stories in height above grade, the system shall not be required to be supervised or connected to an emergency power supply.

(1) Detection systems shall be powered by alternating current (AC), constantly active electric circuits that cannot be deactivated by the operation of any interconnected switching device and shall comply with NFPA-70 (National Electric Code) requirements, except as otherwise provided in this section.

(A) Systems shall consist of smoke detectors of the non-self-contained type or single station units so interconnected that the activation of any one unit will simultaneously activate the individual alarms of all other units or other separate alarms in the system.

(B) Alarms shall be located so as to be effectively heard above all other sounds, by all the occupants, in every occupied space within the building not separated by fire walls having a minimum fire-resistance rating of two hours.

(C) All detection and control units, wiring, and systems installations shall be listed as conforming to U.L. 217, 268, and 864 requirements and shall comply with NFPA No. 72A, No. 72E and No. 74 standards, except as otherwise provided in this section.

(D) The maximum number of single station units that can be interconnected in a multiple station system shall not exceed the number permitted in the installation manual or instructions provided with each detector and referenced in the detector marking.

(E) All components of any interconnected system shall be compatible with each other as indicated in the installation instructions provided with each such component.

(2) All public corridors up to 40 feet in length that form part of a means of egress shall have a minimum of one approved smoke detector.

(A) An additional smoke detector shall be installed for every additional 40 feet or part thereof.

(B) Detectors shall be located at a maximum distance of 20 feet from end walls.

(C) Where corridor width exceeds 10 feet, smoke detector unit spacing shall be reduced in accordance with NFPA-72E standards.

(3) All interior stairways not enclosed by a minimum one hour fire-rated separation from other common areas or which function as a sole interior means of egress, shall have approved smoke detectors installed at each floor level at either the ceiling of the landing or the high point of the sloped staircase soffit.

(4) All interior common areas other than public corridors, interior stairs and basements or cellars shall have approved smoke detectors installed at spacings not to exceed 900 square feet of floor space coverage per smoke detector.

(A) No such detector shall be spaced further than 15 feet from the nearest wall or other vertical building element or be closer than three feet to a window, door or air vent unless not practicable or noted otherwise in NFPA-72E standards.

(B) Attics with ceiling heights less than 7'0" that are not used for any type of storage, and crawl spaces with ceiling heights less than 4'-0" that are not used for any type of storage and are separated from adjacent building spaces by minimum 1-1/2 hour fire rated walls and opening protectives shall not be required to have smoke detectors installed therein.

(5) Basements and cellars shall be subject to the following:

(A) All basements or cellars that lack a minimum one hour fire-rated smooth ceiling assembly shall have approved smoke detectors installed at spacings not to exceed 450 square feet of floor space coverage per smoke detector. At least one detector shall be located on the basement or cellar ceiling as close as possible to the interior stairway opening, or other approved location where the earliest detection of fire would activate the alarm. The maximum spacing between detectors in open joist ceilings perpendicular to the joists shall be 15 feet, and the maximum spacing between detectors parallel to the joists shall be 30 feet. Such detectors shall be installed on the bottom surface of the joists.

(B) All basements or cellars that have an existing approved minimum one hour fire-rated smooth ceiling assembly shall have a minimum of one approved smoke detector per 900 square feet of area. At least one detector shall be located on the basement or cellar ceiling as close as possible to the interior stairway opening or other approved location where the earliest detection of fire would activate the alarm(s).

(C) Compartmentalized and partially enclosed basement or cellar areas shall have additional detectors as required to afford complete protection of the total basement/cellar area in conformity with the above spacing criteria. Where partitions do not extend beyond a distance of 18 inches below the ceiling surface, additional detectors shall not be required.

(6) Additional smoke detectors shall be required in all ceiling areas that are enclosed or separated by beams or similar type projections in order to afford complete protection of the total building area.

(A) Beams that project more than 8 inches from ceiling surfaces and girders which support open joists or beams and have less than a 4-inch clearance between the top of girder and ceiling surface, shall have smoke detectors spaced at a maximum distance of 20 feet perpendicular to the beam or girder projections.

(B) In building areas containing a single beam or girder that projects more than 12 inches from the ceiling surface, smoke detectors shall be located at a maximum distance of 10 feet from the beam or girder projection.

(C) Ceiling bays created by beams that exceed 18 inches in depth and that are spaced more than 8 feet on centers, shall be treated as separate enclosed areas for determining the number of smoke detectors required.

(D) Additional smoke detectors shall not be required in atrium or coffered type ceilings that exceed 12 feet in height.

(E) Ceilings with beams or girders, or coffered type ceilings, or ceilings in atriums having a ceiling height of at least 12 feet, shall conform to the smooth ceiling requirements.

(7) All hotels four stories or more in height, all multiple dwellings six stories or more in height and having 30 or more dwelling units and all rooming houses with 6 or more occupants any one of which is 62 years of age or older, shall have approved smoke detection systems located in all interior occupiable common areas, shall be connected to a supervisory type listed control panel conforming to U.L. 864 requirements and NFIPA No. 72A standards, except as otherwise provided in this section, and shall be powered by an approved emergency power source as required by NFIPA-70 (National Electrical Code).

(A) The control panel shall be of the multi-zoned type that will visually indicate the floor from which the alarm is activated.

(B) All such panels shall be located in accordance with NFIPA-72A standards or as directed by the local fire subcode official.

(8) A pre-signal alarm feature or the separate zoning of floors in multiple story hotels and multiple dwellings for selective floor evacuation are not permitted.

(9) Existing common area smoke detection systems that were installed in compliance with this subchapter prior to its effective date, for which a construction permit was issued subject to plan review approval, shall be accepted as conforming to this section, unless the fire official shall determine, in accordance with N.J.A.C. 5:18-1.4(g), that a hazardous condition exists.

(10) With the approval of the local fire protection subcode official, fixed temperature or combination rate-of-rise and fixed temperature heat detectors may be substituted for smoke detectors in those locations where frequent nuisance alarms would be likely to occur.

Such building spaces include but are not limited to garages, crawl spaces, uninhabitable attics, heater and boiler rooms, laundry rooms, kitchens, restaurants, service areas and other rooms where the ambient temperatures are under 40 degrees Fahrenheit or are above 100 degrees Fahrenheit and/or have a relative humidity either under 20 percent or above 85 percent or where environmental conditions are likely to produce nuisance alarms.

(11) The maximum spacing between either heat detector units or the nearest side wall or partition and a heat detector unit shall not exceed the spacings permitted by Underwriters Laboratories, Inc. listings.

vi. In any municipality that enacted an ordinance requiring the installation of smoke detectors in hotels or multiple dwellings prior to November 12, 1980, a building fully conforming to the requirements of such ordinance prior to November 12, 1980 shall be deemed to be in either full or partial compliance with the requirements of this section if the fire official determines that the provisions of such ordinance provide reasonable life safety protection to the occupants and that replacement of equipment already installed in conformity with such ordinance would be an undue hardship for property owners.

(1) A general determination pursuant to this subsection shall be made by the fire official upon review of the ordinance and separate exceptions

shall not then be required for individual properties covered by such general determination.

(2) If a general determination is made that full compliance with the ordinance is an acceptable substitute for partial compliance with the requirements of this section, the fire official shall specify all respects in which a building fully complying with the ordinance must be made to comply with this section.

3. In all buildings used as child day-care centers, regardless of Use Group.

4. In all buildings of Use Group E up to and including the 12th grade, the system shall consist of:

i. An approved system of automatic smoke detectors; or

ii. An approved automatic fire suppression system equipped with automatic fire alarm devices; or

iii. An approved system which combines the following elements shall be acceptable when devices are located as indicated below:

(1) Combination fixed temperature/rate-of-rise detectors in classrooms and ancillary spaces;

(2) Photoelectric or projected-beam smoke detectors in exit access corridors and at the top of the exit stair enclosures; and

(3) Fixed temperature detectors in such a system shall be accepted in locations such as boiler rooms, garage areas and other spaces in which conditions render other detectors inappropriate.

iv. Existing fire detection systems, installed and maintained in accordance with the manufacturer's recommendations, and meeting the intent of current standards for automatic fire alarms, shall be acceptable, provided:

(1) The existing system is tested, in accordance with the provisions of Article 4, Section F-404.6 of Subchapter 3 of this Code, by an approved service agency competent in the manufactured system, in the presence of the fire official or his designated representative. The fire official may accept a written report of test results in lieu of witnessing the test.

(2) Where a portion of an existing system is not serviceable and cannot be repaired, the existing system shall be replaced in accordance with the provisions of this Code.

(b) An automatic fire alarm system shall not be required in buildings equipped throughout with an automatic fire suppression system, a manual fire alarm system and single station smoke detectors located in the immediate vicinity of sleeping areas in accordance with NFIPA 74.

(c) Automatic fire alarm systems required to be supervised by this Code shall employ one of the following methods as determined by the fire official:

1. Approved central station system in accordance with NFIPA 71;

2. Approved proprietary system in accordance with NFIPA 72D;

3. Approved remote station system of the jurisdiction in accordance with NFIPA 72C; and

4. Approved local alarm service which will cause the sounding of an alarm in accordance with NFIPA 72A.

5:18-4.10 Manual fire alarms

(a) A manual fire alarm system, designed and installed in accordance with the Uniform Construction Code, shall be required:

1. In all buildings more than 3 stories in height having an occupant load of 25 or more;

2. In all buildings of Use Group E up to and including the 12th grade; and

3. In all buildings required to have an automatic fire alarm system in accordance with Section 4.9 above, except hotels and multiple dwellings having an occupant load of less than 25 and having less than 10 dwelling units.

5:18-4.11 Means of egress

(a) Every story utilized for human occupancy having an occupant load of 500 or less shall be provided with a minimum of two exits, except as provided in (b) below. Every story having an occupant load of 501 to 1,000 shall have a minimum of three exits. Every story having an occupant load of more than 1,000 shall have a minimum of four exits.

1. When more than one exit is required, an existing fire escape shall be accepted as providing one of the required means of egress unless judged to be dangerous for use under emergency exiting conditions. Any new fire escapes shall be constructed and installed in accordance with Uniform Construction Code Formal Technical Opinion No. FTO-3, dated March 1985.

i. All occupants shall have unobstructed access to the fire escape without having to pass through a room subject to locking.

ii. Access to a fire escape shall be through a door, except that window access shall be permitted from single dwelling units or guest rooms in Use Groups R-1, R-2 and I-1 or when serving spaces having a maximum occupant load of 10 in other use groups.

iii. In all buildings of Use Group E, up to and including the 12th grade, buildings of Use Group I, rooming houses and child care centers, ladders of any type are prohibited on fire escapes used as a required means of egress.

(b) In buildings having only one exit, the single exit condition shall be permitted to continue as follows:

1. In buildings of Use Group R-3;
2. In all buildings, in the story at the level of exit discharge when the occupant load of the story does not exceed 50 and the exit access travel distance does not exceed 75 feet;
 - i. Exception to 2 above: In buildings [used as day nurseries] of Use Group I and in rooming houses and child care centers, regardless of Use Group, two means of egress shall be required.

3. In buildings of Use Group R-1 and R-2, from floors that are not more than 16 feet above exterior grade.

i. In community residences for the developmentally disabled, the maximum occupant load, excluding staff, is 12.

4. In buildings of Use Group R-1 and R-2, not more than two stories in height, from floors that are more than 16 feet above exterior grade, when there are not more than 4 dwelling units per floor and the exit access travel distance does not exceed 50 feet. The minimum fire resistance rating of the exit enclosure and of the opening protection shall be 1 hour.

i. In community residences for the developmentally disabled, the maximum occupant load, excluding staff, is 12.

5. In buildings of Use Group B or S-2, not more than two stories in height, which are not greater than 3000 square feet per floor, when the exit access travel distance does not exceed 75 feet. The minimum fire resistance rating of the exit enclosure and of the opening protection shall be 1 hour.

6. Open parking structures where vehicles are mechanically parked.

(c) All multi-level dwelling units in buildings of Use Group R-1 or R-2 of Type I or Type II construction, an exit shall not be required from each level of the dwelling unit provided that the travel distance within the dwelling unit does not exceed 75 feet.

(d) All rooms and spaces having an occupant load greater than 50 or in which the travel distance exceeds 75 feet shall have a minimum of two egress doorways.

1. The following are exceptions to (d) above:
 - i. Storage rooms having a maximum occupant load of 10;
 - ii. Classrooms having a maximum occupant load of 75 in buildings equipped throughout with an automatic fire suppression system; and
 - iii. In buildings of Use Group I-2, any patient sleeping room or suite of rooms greater than 1,000 square feet shall have a minimum of two egress doorways.

(e) When buildings of Use Groups A-2 and A-3 have more than two individual rooms which can be used for separate functions and each room has an occupant load of more than 300, the required egress doors from such rooms shall lead directly outside or to an exit passageway.

1. Such passageways shall be completely enclosed by assemblies having a fire-resistance rating of not less than two hours.
2. Such passageways shall not be used for any other purpose and shall lead directly outside.

(f) The capacity of means of egress in each story shall be sufficient for the occupant load thereof.

1. The capacity per unit of egress width shall be computed in accordance with the following table for the specified use groups.

Table 5:18-4.11(f)
CAPACITY PER UNIT EGRESS WIDTH

Use group	Without fire suppression system Number of occupants		With fire suppression system Number of occupants	
	Stairways	Doors, ramps and Corridors	Stairways	Doors, ramps and Corridors
A	75	100	113	150
B	60	100	90	150
E	75	100	113	150
F	60	100	90	150
H	—	—	60	100
I-1	60	100	90	100
I-2	22	30	35	45
I-3	60	100	90	150
M	60	100	90	150
R	75	100	113	150
S	60	100	90	150

2. The unit of egress width for all approved types of means of egress parts and facilities shall be 22 inches with a credit of one half unit for each 12 inches width in addition to one or more 22 inch units. Fractions of a unit of width less than 12 inches shall not be credited.

3. The maximum permitted occupant load of a given space shall be limited to the smallest number determined by:

i. Computing the occupant load at the rate of one occupant per [three] five square feet of available floor area that can be physically occupied by a person, or

ii. The smallest number of occupants for which exit capacity is provided based on the capacity per unit of egress width of the individual components of the means of egress.

(g) (Reserved.)

(h) The length of a dead end corridor shall not exceed 35 feet.

1. The following are exceptions to (h) above:

i. The maximum length of a dead end corridor shall be 50 feet in buildings equipped throughout with an automatic fire alarm system installed in accordance with the New Jersey Uniform construction Code.

ii. The maximum length of a dead end corridor shall be 70 feet in buildings equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

(i) All means of egress shall be provided with artificial illumination as follows:

1. All means of egress in other than buildings of Use Group R-3 shall be equipped with artificial lighting facilities to provide the intensity of illumination herein prescribed continuously during the time that conditions of occupancy of the building require that the exits be available. Lighting shall also be provided to illuminate the exit discharge in all buildings other than Use Groups F, H and S. In buildings of Use Group R-2, means of egress lighting, except that lighting within a dwelling unit, shall be wired on a circuit independent of circuits within any dwelling unit. The disconnecting means and overcurrent protection device shall not be located within a dwelling unit or such that access must be obtained by going through a dwelling unit.

2. The intensity of light at floor level shall be not less than one foot candle.

3. In buildings of Use Groups A and E used for the exhibition of motion pictures or other projections by means of directed light, the illumination of aisles may be reduced during such period of projection to not less than 0.2 foot candle.

i. The lighting of exits, aisles and auditoriums shall be controlled from a location inaccessible to unauthorized persons. Supplementary control shall also be provided in the motion picture projection room.

(j) Means of egress lighting shall be connected to an emergency electrical system conforming to NFPA 70 (NEC) to assure continued illumination for a duration of not less than one hour in case of primary power loss in the following buildings:

1. In all buildings of Use Group A, E and I;
2. In all buildings of Use Group B containing more than 100 occupants;
3. In all buildings of Use Group M when greater than 3,000 square feet in area on any floor, or when having one or more floors above or below grade floor;
4. In buildings of Use Group R-1 containing more than 25 sleeping rooms;
5. In all buildings of Use Group R-2 in any means of egress which serves more than 50 occupants;
6. In all windowless buildings or portions thereof containing more than 50 occupants.

(k) In all buildings, rooms or spaces required to have more than one exit or exit access, all required means of egress shall be indicated with approved internally illuminated signs reading "Exit", visible from the exit access and, when necessary, supplemented by directional signs in the exit access indicating the direction and way of egress. All "Exit" signs shall be located at exit doors or exit access areas, so as to be readily visible.

1. Exception to (k) above: Exit signs shall not be required in buildings of Use Groups I-1, R-2 and R-3 having a total occupant load, excluding staff, of 20 or less.

2. "Exit" signs shall have red or green letters at least six inches high and the minimum width of each stroke shall be three-quarter inch on a white background or in other approved distinguishable colors. If an arrow is provided as part of an "Exit" sign, the construction shall be such that the arrow direction cannot be readily changed. The word "Exit" shall be clearly discernible when the internally illuminated sign is not energized.

3. Each sign shall be illuminated by a source providing not less than five foot candles at the illuminated surface.

i. Exception to 3 above: Approved self-luminous signs which provide evenly illuminated letters shall have a minimum luminance of 0.06 foot lamberts.

4. All "Exit" signs shall be illuminated at all times when the building is occupied. To assure continued illumination for a duration of not less

than one hour in case of primary power loss, the "Exit" signs shall be connected to an emergency electrical system.

i. Excepton to 4 above: Approved self-luminous signs which provide continuous illumination independent of external power sources need not be connected to an emergency electrical system.

(1) Means of egress doors shall conform to the following:

1. All egress doors serving an occupant load greater than 50 shall swing in the direction of exit travel;

2. In buildings of Use Groups R-1 and R-2 all doors opening onto a grade passageway or exit stair shall be self-closing or automatic closing by smoke detection.

3. All dwelling unit, guest room or rooming unit corridor doors in buildings of Use Groups R-1, R-2, and I-1 shall be at least 1 1/2" solid core wood and shall not have any glass panels, other than approved wire glass in metal frames. Corridor doors shall not be constructed of hollow core wood, shall not contain louvers and shall not be of panel construction. Doors shall fit both plumb and level in frames, and be reasonably tight fitting. All replacement doors shall have a 20 minute label.

i. Existing doors meeting the requirements of Federal Housing and Urban Development Rehabilitation Guidelines #8 or of Section 5 of Appendix B of the BOCA Basic/National Existing Structures Code, 1984 Ed. for a rating of 15 minutes or better shall be accepted as meeting the provisions of this requirement.

(1) Modifications made to existing doors to achieve the required rating shall be conducted under the supervision of the fire official.

ii. Existing doors in buildings provided with approved, complete automatic suppression shall be required only to provide a smoke barrier; shall not contain louvers, shall fit plumb and level, and be reasonably tight fitting.

4. Buildings of Use Group I-3 having remote power unlocking capability on more than 10 doors shall be provided with an emergency power source for such locks. Power shall be arranged to automatically operate upon failure of normal power within 10 seconds and for a duration of not less than one hour.

(m) Every required exit stairway having three or more risers and not provided with handrails or in which the existing handrails are judged to be in danger of collapsing when used under emergency exiting conditions, shall be provided with handrails for the full length of the run of steps on at least one side. All exit stairways more than 66 inches wide and subject to the maximum designed occupancy load shall have handrails on both sides. Where there are no handrails or where the existing handrails must be replaced in order to correct a hazardous condition, the handrails shall be designed and installed in accordance with the provisions of the New Jersey Uniform Construction Code.

(n) Every open portion of a stair, landing, or balcony which is more than 30 inches above the floor or grade below and not provided with guards or those in which the existing guards are judged to be in danger of collapsing when used under emergency exiting conditions, shall be provided with guards. Where there are no guards or where the existing guards must be replaced in order to correct a hazardous condition, the guards shall be designed and installed in accordance with the New Jersey Uniform Construction Code.

(o) (Reserved.)

5:18-4.12 Interior finish

(a) The interior finish of walls and ceilings shall have a flame spread rating not greater than the class prescribed by Table 5:18-4.12(a).

1. The following are exceptions to (a) above:

i. The use of vinyl or paper wall coverings not exceeding one-twenty-eighth of an inch in thickness which is applied directly to a noncombustible or fire retardant treated wood substrate shall not be regularly by this section.

ii. Interior trim which does not exceed 10 percent of the aggregate wall and ceiling area of any room or space shall not be regulated by this section.

iii. When an approved automatic fire suppression system is provided, interior finish of Class II or III materials shall be permitted where Class I or II materials, respectively, are required by this section.

iv. Exposed portions of structural members complying with the requirements for heavy timber construction in accordance with the Uniform Construction Code shall not be regulated by this section.

Table 5:18-4.12(a)
Interior Finish Requirements

Use Group	Exit Enclosures	Exit Access Enclosures	Rooms or Spaces
A†, I	I	II	III
B, E, M, R-1, R-2	I	II	No Minimum

†See N.J.S.A. 5:18-4.16(a)2 for amusement buildings.

(b) The classification of interior finishes referred to herein corresponds to flame spread ratings determined by ASTM E84 as follows: Class I flame spread, 0-25; Class II flame spread, 26-75; Class III flame spread, 76-200. In all cases, the smoke developed rating determined by ASTM E84 shall not exceed 450.

(c) All existing interior finish materials which do not comply with the requirements of this section shall be removed or shall be treated with an approved fire retardant coating in accordance with the manufacturers instructions to secure compliance with the requirements of this section.

(d) In buildings of Use Group I-3, interior furnishings, drapes, curtains, carpeting, decorations, bedding, etc. shall be flame retardant.

5:18-4.13 Protection of interior stairways and other vertical openings

(a) All interior stairways and other vertical openings connecting more than six floor levels shall be enclosed with approved assemblies having a fire resistance rating of not less than two hours with approved opening protectives.

(b) All interior stairways and other vertical openings connecting four to six floor levels shall be enclosed with approved assemblies having a fire resistance rating of not less than one hour with approved opening protectives.

(c) Interior stairways and other vertical openings connecting no more than three floor levels shall have protection as follows:

1. In Use Group A, a minimum 30 minute fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barrier may be omitted:

i. When connecting the main floor and balcony in places of worship, theaters and auditoriums; or

ii. When all the following conditions are met:

(1) The communicating area has a low hazard occupancy, or has a moderate hazard occupancy which is protected throughout by an automatic suppression system; and

(2) The lowest or next to the lowest level is a street floor; and

(3) The entire area is open and unobstructed in a manner such that it may be assumed that a fire in any part of the interconnected spaces will be readily obvious to all of the occupants; and

(4) Exit capacity is sufficient to provide egress simultaneously for all the occupants of all levels by considering all areas to be a single floor area for the determination of required exit capacity; and

(5) Each floor level, considered separately, has at least one-half of its individual required exit capacity provided by an exit or exits leading directly out of that level without having to traverse another communicating floor level or be exposed to the smoke or fire spreading from another communicating floor level.

2. In Use Group B, a minimum 30 minute fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barrier may be omitted whenever the conditions of i, ii, or iii. below are met:

i. Whenever all the conditions enumerated in 1.ii. above are met; or

ii. When the vertical opening connects only two adjacent floor levels, neither or which is a basement; and

(1) The vertical opening is not connected with corridors or other stairways; and

(2) The area per floor does not exceed 3000 sq. ft. and at least one approved exit, consisting of a one-hour enclosed stairway, exterior stairway, fire escape or horizontal exit, is provided; or

(3) The aggregate floor area does not exceed 3000 sq. ft. and at least two remote exits are provided; or

iii. When the vertical opening connects no more than three floor levels, none of which is a basement; and

(1) The aggregate floor area does not exceed 3000 sq. ft. and at least two remote exits are provided; and

(2) Floors below the street floor used for storage or other than business occupancy have no unprotected openings to business occupancy floors.

3. In Use Group E, a minimum one-hour fire barrier shall be provided to protect all interior stairways and other vertical openings connecting not more than three floor levels. Such barrier may be omitted when connecting two floor levels, neither of which is a basement, and all of the conditions enumerated in 1.ii. above are met, including in all cases, complete automatic fire suppression as required by 1.ii.(1) for moderate hazard occupancies.

4. In Use Group F, a minimum one-hour fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted:

- i. Whenever all the conditions enumerated in 1.ii. above are met; or
- ii. In special purpose occupancies when necessary to manufacturing operations and every floor level has direct access to at least one enclosed stairway or other approved exit protected against obstruction by any fire or smoke in the open areas connected by the unprotected vertical opening; or
- iii. When the vertical opening connects only two adjacent floor levels.

5. In Use Group H, a minimum one-hour fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted when necessary to manufacturing operations and every floor level has direct access to at least two remote enclosed stairways or other approved exits protected against obstruction by any fire or smoke in the open areas connected by the unprotected vertical openings.

6. In Use Group I-1, a minimum one-hour fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted when connecting not more than two floor levels, which are separated by a one-hour fire barrier equipped with self-closing or automatic closing 20 minute door at the top or bottom of the stairway, and when occupied by no more than 12 persons, excluding staff.

7. In Use Group I-2, a minimum one-hour fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted when connecting not more than two floor levels, which are separated by a one-hour fire barrier equipped with self-closing or automatic-closing 20 minute door at the top or bottom of the stairway and when such stairway does not serve as a required means of egress.

8. In Use Group I-3, a minimum one-hour fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted.

i. When connected not more than two floor levels and the conditions of 1.ii.(3), (4), and (5) above are met; or

ii. When the vertical opening consists of a multitiered, open cell block.

9. In Use Group M, a minimum 30 minute fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three floor levels. Such a fire barrier may be omitted:

i. When connecting a street level floor and a balcony or mezzanine; or

ii. When connecting not more than two floor levels; or

iii. When provided with an approved automatic suppression system, openings may be unprotected between the street floor and the floors immediately above and below the street floor, provided that each floor level, considered separately, has at least one-half its required exit capacity provided by exit(s) leading directly out of that level as provided in 1.ii.(5) above.

iv. When meeting the provisions of iii. above, one floor above those otherwise permitted may be added if such floor is not used for sales.

10. In Use Group R-1, a minimum one-hour fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barrier may be omitted when connecting not more than two floor levels and the building is equipped throughout with an automatic fire suppression system or when connecting not more than three floor levels and all of the following conditions are met:

i. Every sleeping room is provided with an escape window having minimum dimensions of 24" wide x 24" high, unless the window meets the requirements of the New Jersey Uniform Construction Code for escape windows.

ii. Every sleeping room above the second floor is provided with direct access to a fire escape or other approved exit; and

iii. Any communicating corridor exceeding eight feet in length is separated from the vertical opening by a one-hour fire barrier.

11. In Use Group R-2, a minimum 30 minute fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barrier may be omitted when connecting not more than two floor levels and the building is equipped throughout with an automatic fire suppression system; or when connecting not more than three floor levels and all of the following conditions are met:

i. Every sleeping room is provided with an escape window having minimum dimensions of 24" wide x 24" high, unless the window meets the requirements of the New Jersey Uniform Construction Code for escape windows.

ii. Every dwelling unit above the second floor is provided with direct access to a fire escape or other approved exit; and

iii. Any communicating corridor exceeding eight feet in length is separated from the vertical opening by a 30 minute fire barrier.

5:18-4.14 Information signs

(a) A sign shall be provided at each floor landing in all interior stairways more than three stories in height designating the floor level above the floor of discharge.

(b) All elevator lobby call stations on all floor levels shall be marked with approved signs reading, "Use Stairways in Case of Fire—Do Not Use Elevators".

5:18-4.15 Smoke barriers

(a) Wherever smoke barriers are required by this subchapter, they shall be constructed in accordance with the following provisions:

1. Smoke barriers shall have a fire resistance rating of not less than one-half hour and shall form an effective membrane continuous from outside wall to outside wall and from floor slab to floor or roof deck above, including continuity through all concealed spaces, such as those found above suspended ceilings, and including interstitial structural and mechanical spaces. Transfer grilles, whether equipped with fusible link-operated dampers or not, shall not be used in these partitions. Wire glass panels not exceeding 1,296 square inches in approved steel frames may be used in smoke barriers.

i. Exception to (1) above: Smoke barriers are not required in interstitial spaces when such spaces are designed and constructed with ceilings that provide resistance to the passage of fire and smoke equivalent to that provided by smoke barriers.

2. Doors in smoke barriers shall have a fire-resistance rating of not less than 20 minutes when tested in accordance with ASTM E152 without the hose stream and labeled by an approved agency. Double egress corridor doors shall have vision panels of one-quarter inch thick labeled wired glass mounted in approved steel frames. Such panels may also be provided in other doors in smoke barriers. The glass area of the vision panels shall be limited to 1,296 square inches for each door. The doors shall close the openings with only the clearance necessary for proper operation under self-closing or automatic closing and shall be without undercuts, louvers or grilles. Rabbits or astragals are required at the meeting edges of double egress doors, and stops are required on the head and jams of all doors in smoke barriers. Positive latching devices are not required on double egress corridor doors, and center mullions are prohibited.

i. Exception to (2) above: Protection at the meeting edges of doors and stops at the head and sides of door frames may be omitted in buildings equipped with an approved engineered smoke control system. The engineered smoke control system shall respond automatically, preventing the transfer of smoke across the barrier.

3. Doors in smoke barriers shall be self-closing or shall be provided with approved door hold-open devices of the fail-safe type which shall release the doors causing them to close upon the actuation of smoke detectors as well as upon the application of a maximum manual pull of 50 pounds against the hold-open device.

4. An approved damper designed to resist the passage of smoke shall be provided at each point a duct penetrates a smoke barrier. The damper shall close upon detection of smoke by an approved smoke detector located within the duct.

i. In lieu of an approved smoke detector located within the duct, ducts which penetrate smoke barriers above doors are permitted to have the approved damper arranged to close upon detection of smoke by the local device designed to detect smoke on either side of the smoke barrier door opening.

ii. Dampers are not required in buildings equipped with an approved engineered smoke control system.

iii. Dampers are not required where the openings in ducts are limited to a single smoke compartment and the ducts are of steel construction.

(b) In buildings of Use Group I-2, every story used for sleeping purposes for more than 30 occupants and stories which are usable but unoccupied shall be divided into not less than two compartments by smoke barrier walls such that each compartment does not exceed 22,500 square feet and no more than 150 feet in length and width.

5:18-4.16 Amusement buildings

(a) All buildings or portions thereof, of Use Group A-3, which are designed to disorient the occupant, reduce vision, present barriers or otherwise impede the flow of traffic, shall conform to all other applicable provisions of this Code and the following:

1. Every such amusement facility shall be equipped throughout with

an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

2. The interior finish of all walls and ceilings shall in no case be less than class II materials in accordance with Sections 5:18-4.12(b) and (c).

3. Every such amusement facility shall be equipped with exit signs installed in accordance with N.J.A.C. 5:18-4.11(k).

4. Every such amusement facility shall be equipped throughout with an approved automatic fire alarm system installed in accordance with the Uniform Construction Code and in accordance with 5. through 8. below.

5. The automatic alarm system shall activate a prerecorded message which can be clearly heard throughout the entire facility instructing the patrons to proceed to the nearest exit. Any alarm signals used in conjunction with the prerecorded message shall produce a signal which is distinctive from all sounds used in the normal operation of the amusement facility.

6. Every such amusement facility shall be equipped with emergency lighting equipment installed in accordance with the New Jersey Uniform Construction Code. The emergency lighting equipment shall automatically activate when;

- i. The fire suppression system is activated;
- ii. The fire alarm system is activated; or
- iii. Loss of the primary power supply occurs.

7. All audio and visual equipment such as horns, bells, flashing or otherwise distracting stimuli and mechanized displays shall cease operation upon initiation of an alarm by the automatic fire alarm system or upon activation of the automatic fire suppression system.

8. Activation of the automatic alarm system shall automatically shut down the air distribution system.

5:18-4.17 High rise buildings

(a) In addition to all other applicable provisions of this code, high rise buildings shall conform to the provisions of this section.

(b) All high rise buildings of Use Groups M and R-1 shall be equipped throughout with an approved automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

(c) All high rise buildings of Use Groups B and R-1 shall be equipped with central control station and communication systems as follows:

1. An approved public address communication system consisting of loud speakers on each floor of the building, in each elevator and elevator lobby and in each stair enclosure which shall be capable of being operated from the central control station;

2. A two-way fire department communication system which shall operate between the central control and every elevator, elevator lobby and entry to enclosed exit stairways;

3. A central control station for fire department operations shall be provided in a location approved by the fire department. It shall contain where applicable the public address system panel; the fire department communications panel; fire detection and alarm system annunciator panels; status indicators and controls for air handling systems; sprinkler valve and water flow detector display panels; and status indicators and a telephone for fire department use with controlled access to the public telephone system.

(d) In all high rise structures, each re-circulating air or exhaust system which serves more than one floor shall be equipped with approved smoke and heat detection devices in accordance with the Uniform Construction Code. The devices shall stop the fan(s) automatically and shall be of the manual reset type. Automatic fan shutdown is not required when the system is part of an approved smoke removal or smoke control system.

(e) In all high rise structures served by elevator(s), access to all floors shall be provided by at least one elevator equipped with emergency control and all elevators shall be equipped with car recall activated by a smoke detector in each lobby. The recall and control systems shall be installed in accordance with the New Jersey Uniform Construction Code.

(f) In all high rise buildings of Use Group R-1 and R-2, smoke barriers conforming to N.J.A.C. 5:18-4.15(a) shall be provided around all elevator landings on every floor above the main floor level, with the following exceptions:

1. Such lobbies are not required in buildings provided with a complete automatic fire suppression system.

2. The smoke barrier shall be permitted to be terminated at the ceiling, provided the ceiling membrane provides resistance to the passage of smoke equivalent to that provided by smoke barriers.

5:18-4.18 Boiler/furnace equipment rooms

(a) Boiler/furnace equipment rooms shall be enclosed by one hour fire rated construction in the following facilities: day nurseries, children's shelter facilities, residential child care facilities and similar facilities with children below the age of 2-1/2 years, and which are classified as Use Group I-2 in accordance with the Uniform Construction Code, shelter

facilities, residences for the developmentally disabled, group homes, teaching family homes, transitional living homes, rooming and boarding houses, hotels and multiple dwellings.

1. Exception to (a) above: Furnace and boiler equipment of low pressure type (operating at pressures of 15 psig or less for steam equipment or 160 psig or less for hot water equipment) when installed in accordance with manufacturer recommendations or furnace and boiler equipment of residential (R-3) type (200,000 BTU per hour input rating or less) is not required to be enclosed.

(b) Emergency controls shall be provided [as follows] in all structures classified as day nurseries, children's shelter facilities, residential child care facilities and similar facilities with children below the age of 2-1/2 years, and which are classified as Use Group I-2 in accordance with the Uniform Construction Code and in group homes, teaching family homes, and supervised transitional living homes in accordance with the following:

1. Emergency shutoff switches for furnaces and boilers in basements must be at the top of the stairs leading to the basement;

2. Emergency shutoff switches for furnaces and boilers in other enclosed rooms must be located outside of the room.

5:18A-2.3 Local enforcing agencies; establishment; dissolution

(a) Creation of a Local Enforcing Agency shall be subject to the following:

1. (No change.)

2. The governing body shall [be required to establish a local enforcing agency if requested to do so by any fire department or fire district within its limits.] create or designate a local enforcing agency within the limits of a requesting fire department or district.

3. The governing body shall designate a county enforcing agency or local enforcing agency [to enforce the Code within the limits of a fire department only if requested to do so by the fire department or the Board of Commissioners of the fire district, as the case may be.] other than the Bureau, to enforce the Code within the limits of a fire department or district if requested by the proper department or district authority.

[4. the governing body shall have no authority to create a local enforcing agency, other than the county fire marshal, outside the fire department organization unless requested to do so pursuant to 3. above.]

Renumber 5. and 6. as 4. and 5. (No change in text.)

[7. No ordinance shall be required where the fire department or district wishes to let enforcement become the responsibility of the State. The State will automatically assume jurisdiction where no ordinance is adopted.]

6. If neither the fire department nor district chooses to enforce the Code or designate an existing county fire marshal, or if the fire marshal declines designation, the municipality may create its own Local Enforcing Agency subject to 7. below. If no agency is created or designated, the Bureau will assume jurisdiction in accordance with 2.2. above.

Renumber 8. as 7. (No change in text.)

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

(d) Dissolution of a fire district shall take place as follows:

1. If a fire district designated as a separate Local Enforcing Agency under this subchapter is dissolved, the fire department within the territorial area of the dissolved district shall have the option, within 30 days of the dissolution to assume the Local Enforcing Agency responsibilities. If the fire department does not exercise the option, it shall pass to another district within the municipality, and if not exercised by a district shall pass to the municipality itself. The district and municipality shall each have 15 days in which to decide the matter.

2. If the dissolved district has combined with another district or districts to form a Local Enforcing Agency (LEA), the remaining district(s) shall have the option, within 30 days of the dissolution, to assume Local Enforcing Agency responsibilities. If this option is not exercised, it shall pass to the fire department within the territorial area of the dissolved districts and, if not exercised, shall pass to the municipality. The department and municipality shall each have 15 days in which to decide the matter.

3. Exercise of the option shall be evidenced by a written notice signed by the party authorized to act on behalf of the entity. This notice shall be delivered to the municipal governing body which enacted the ordinance authorizing local enforcement. In addition, a copy shall immediately be forwarded to the Bureau.

4. The local enabling ordinance governing the Local Enforcing Agency shall be modified if necessary and promptly filed with the Bureau. The new Local Enforcing Agency shall promptly assume LEA responsibilities and notify the Bureau.

5. If, within 60 days of dissolution, the Bureau has not received proper written notice of the assumption of a dissolved district's obligations, the Bureau shall assume responsibility.

(e) Fire Districts created after June 18, 1985, shall have 60 days from

the date of the first meeting of the Board of Commissioners in which to request designation as a Local Enforcing Agency in accordance with the provisions set forth in this subchapter. If such a request is made and a Local Enforcing Agency exists, the district and such agency shall cooperate in transferring the LEA responsibilities.

5:18A-4.3 Certification required

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

(c) When a local enforcing agency, which enforces the Code in [lieu of the Commissioner, and which has employed persons certified pursuant to this subchapter for life hazard use inspections] **life hazard uses** has a vacancy that leaves the agency without a certified fire official, then the [agency] **appointing authority** shall appoint a certified person to the position within [30] **45** days of the vacancy having occurred. [If such appointment is not made then the local enforcing agency shall notify the Chief, Bureau of Fire Safety, and the governing body of the municipality of the vacancy within 30 days, of its having occurred. The local agency shall not perform any life hazard use inspections during any period it does not employ a certified inspector. The Bureau shall assume responsibility for enforcement of the code from the 61st day forward.]

[1. The Bureau may grant a 30 day extension during which time the Bureau can assist if necessary.] **The appointing authority may request an extension of 30 days in which to make the appointment. Such requests shall be made within the initial 45 day period, by the appointing authority or his designee, to the Bureau, Attention: LEA Supervisor, shall set forth the reasons why additional time is necessary and shall indicate if any inspection or enforcement matters require Bureau assistance in the interest of public health, safety or welfare. Within seven business days from receipt of an extension request, the Bureau shall send a written determination either granting or denying the request.**

1. Fire Officials appointed to fill vacancies shall so notify the Bureau in writing on the Local Enforcing Agency letterhead within five days of the appointment.

2. Fire Officials shall undertake duties within 10 days of being appointed.

3. The appointing authority or his designee shall notify the Bureau, Attention: LEA Supervisor, in writing within five days of the date that the Fire Official vacates his office.

4. The Bureau shall be notified in writing by either the appointing authority or the fire official at least 10 days in advance of any leaves of absence by the fire official in excess of 30 days, which notification shall include the provisions which have been made to enforce the Code during the period of absence.

5. If no fire official is appointed within the applicable time, the Bureau shall assume responsibility for enforcement and modify the Registry accordingly. Registration fees collected for the period during which the Bureau is responsible, as well as for the preceding period of the fire official's vacancy, shall enure to the Bureau.

(d) (No change.)

5:18A-4.4 Requirements for certification

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

1. (No change.)

[2. A person who has received a certificate of completion for a course in Fire Prevention and Control administered by the Building Official and Code Administrators International (BOCA) after January 1, 1978. A certificate of completion for the BOCA correspondence course in Fire Prevention and Control shall be valid only if issued prior to February 19, 1985.]

Renumber 3.-4. as 2.-3. (No change in text.)

(a)

**Uniform Construction Code
Building, Fire Protection and Mechanical Subcodes
Proposed Amendments: N.J.A.C. 5:23-3.4, 3.14,
3.17, and 3.20**

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

Proposal Number: PRN 1986-225.

Submit comments by July 16, 1986 to:

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

The agency proposal follows:

Summary

Adoption of the 1986 Accumulative Supplement to the BOCA Basic National Building and Mechanical Codes/1984 is proposed for inclusion in the State Uniform Construction Code. The BOCA Basic National Building and Mechanical Codes/1984 are the respective building and mechanical subcodes of the State Uniform Construction Code. Both are adopted by reference subject to modifications stated in the Uniform Construction Code Regulations. The sponsoring organization of the model codes, Building Officials and Code Administrators International, Inc. engages in a public code change process and issues supplements between succeeding editions of its codes. This procedure enables the codes to be responsive to rapidly advancing building technology. The adoption of these supplements by the Department of Community Affairs is proposed so that New Jersey's building, fire protection and mechanical subcodes may be as up-to-date as possible. The modifications being made to the supplements relate to the administration and enforcement systems of the State Uniform Construction Code and do not change the technical provisions of the model codes.

Social Impact

The supplements are adaptations of the model codes and are designed to protect public health, safety and welfare through efficient and effective use of available materials and current construction technology. They have an impact on anyone involved in the construction or alteration of buildings, such as: property owners, building and renovation contractors, and subcode officials.

Economic Impact

There may be an economic impact on property owners and building contractors who perform or contract for the performance of work that will have to comply with the supplements to the code. In some instances the new code provisions may result in savings and in other instances in increased costs. It is not possible to anticipate these economic impacts as the future extent and type of construction activity in the State impacted by the supplements is unknown.

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

5:23-3.4 Responsibility

(a) Responsibility for enforcement of specific provisions of the building subcode shall be delineated as follows:

1. Plan review functions of sections [501.0] **513.0**, 601.0, through [612.0] **607.0**, [614.0] **609.0** through [621.0] **613.0**, [623.0, 624.0, 628.0] **617.0** through [631.0] **621.0** [716.0]; article 8; sections [1318.0] **1316.0** and [1319.0] **1317.0**; articles 14, 15, 16 and 17; and sections 1818.0, [and] 1820.0, **2107.0, 2108.0, 2111.0, 2112.0, 2116.0 and 2117.0**; shall be enforced jointly by the building subcode official and fire protection subcode official.

2. Plan review functions of sections [613.0, 622.0 and 625.0] **608.0 and 614.0** through [627.0] **616.0 and 622.0** shall be enforced exclusively by the building subcode official.

3. Construction inspection functions of sections 601.0 [602.0, 616.0] through [622.0] **612.0**, [624.0] **614.0** through [631.0] **622.0**; [716.0]; article 8; sections [1318.0] **1316.0** and [1319.0] **1317.0**; articles 14 and [19] **15** shall be enforced exclusively by the building subcode official.

4.-6. (No change.)

(b) (No change.)

(c) Responsibility for enforcement of specific provisions of the electrical subcode shall be delineated as follows:

1. Plan review functions of article 300-21; **article 450, part C**; chapter 5; and article 760 shall be enforced jointly by the electrical subcode official and the fire protection subcode official.

2. Construction inspection functions of article 30021; **article 450, part C**; chapter 5; and article 760 shall be enforced exclusively by the electrical subcode official.

3.-4. (No change.)

(d) Responsibility for enforcement of the fire protection subcode shall be the exclusive province of the fire protection subcode official except as is otherwise provided in (a) [and] (c) [above] **and (f)**.

(e) Responsibility for enforcement of specific provisions of the energy subcode shall be as follows:

1.-2. (No change.)

3. Article 6 and standard [EMS-1] **LEM-1** shall be enforced exclusively by the electrical subcode official.

4.-6. (No change.)

(f) **Responsibility for enforcement of specific provisions of the Mechanical Subcode shall be as follows:**

1. Articles 3, 11, 12, and 14, Plan Review functions shall be enforced jointly by the building and fire subcode officials. Construction inspection functions shall be enforced exclusively by the Building subcode official.

2. Articles 4, 5, and 10 Plan review and construction inspection functions shall be enforced exclusively by the fire subcode official.

3. Articles 6, 7, 8, 9, and 13 Plan review and construction inspection functions shall be enforced exclusively by the plumbing subcode official.

4. Article 15 Plan review functions shall be enforced by the Department of Community Affairs, and construction inspection functions shall be enforced by the fire subcode official.

5. Article 16 Plan review and construction inspection functions shall be enforced exclusively by the building subcode official.

6. Article 18 Plan review functions shall be enforced jointly by the building and plumbing subcode officials, construction inspection functions shall be enforced by the plumbing subcode official.

5:23-3.14 Building subcode

(a) Rules concerning subcode adopted are as follows:

1. (No change.)

2. The [1985] 1986 Accumulative Supplement to the BOCA Basic/National Building Code/1984 is adopted by reference with modifications as cited in (c) below as part of the building subcode for New Jersey.

(b) (No change.)

(c) The following articles or sections of the [1985] 1986 Accumulative Supplement to the building subcode are modified as follows:

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

i. Sections 103.3, 103.4, 111.6.1, 111.7, 124.0 are deleted.

2. The following [amendment is] amendments are made to Article 5 of the building subcode entitled "General Building Limitations":

i. Section 504.1 is amended to delete the term "building official" from Exception 1 and substitute in lieu thereof, "building subcode official."

[i.] ii. (No change in text.)

iii. Section 512.1.4 is deleted.

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

i. Section 609.2.5 is amended to delete the phrase "plumbing code listed in Appendix A" and substitute in lieu thereof "Plumbing Subcode."

ii. Section 617.4 is amended to delete the phrase "mechanical code listed in Appendix A" and substitute in lieu thereof "mechanical subcode."

4. The following amendments are made to Article 8 of the building subcode entitled "Means of Egress.":

i. Section 812.5.4 is amended to delete "15 pounds (73.23N)" and in lieu thereof substitute "8 pounds (39.55N)."

ii. Section 812.5.6 is amended to delete "15 pounds (73.23N)" and in lieu thereof substitute "(pounds (39.55N))."

iii. Section 812.5.7 is amended to delete the term "building official" from Exceptions 1 and 2 and substitute in lieu thereof, "fire protection subcode official."

iv. Section 817.1.1 is amended to delete the term "building official" and substitute in lieu thereof, "building subcode official."

5. The following amendments are made to Article 13 of the building subcode entitled "Building Enclosures, Walls and Wall Thickness.":

i. Section 1313.6 is amended to delete the phrase "NFIPA 70 listed in Appendix A" and substitute in lieu thereof, "the electrical subcode."

ii. Section 1313.8 is amended to delete the reference to sections 103.0, 119.0 and 120.4 and substitute in lieu thereof, "N.J.A.C. 5:23-2."

iii. Sections 1313.10.2, 1313.10.3 and 1315.2.3 are amended to delete the term "building official" and substitute in lieu thereof, "building subcode official."

iv. Section 1316.2 is amended to delete the phrase "mechanical code listed in Appendix A" and substitute in lieu thereof "Mechanical Subcode."

[3.] 6. The following [amendment is] amendments are made to Article 14 of the building subcode, entitled "Fire Resistive Construction Requirements":

i. (No change.)

ii. Section 1417.2 is amended to delete the phrase "mechanical code listed in Appendix A" from Exception 7 and substitute in lieu thereof, "mechanical subcode."

[4.] 7. The following [amendment is] amendments are made to Article 17 of the building subcode entitled "Fire Protection Systems.":

i. (No change.)

ii. Section 1717.7.3 is amended to delete the term "department" on line 3 and in lieu thereof, substitute "fire protection subcode official."

8. The following amendment is made to Article 21 of the building subcode

entitled "Elevator, Dumbwaiter and Conveyor Equipment, Installation and Maintenance."

i. Section 2102.4.1 is amended to delete the term "building official" on line 6 and in lieu thereof, substitute "construction official."

9. The following amendment is made to Article 22 of the building subcode entitled "Plumbing Systems.":

i. Section 2207.1 is deleted.

[5.] 10. (No change in text.)

[6.] 11. The following amendments are made to Appendix A of the building subcode entitled "Reference Standards.":

i. (No change.)

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

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

(3) Basic/National Private Sewage Disposal Code.

iii-iv. (No change.)

5:23-3.17 Fire protection subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c.217, as amended, the commissioner hereby adopts the following portions of the building, [and] electrical and mechanical subcodes to the extent delineated in N.J.A.C. 5:23-3.4, as the Fire Protection Subcode for New Jersey.

i. BOCA Basic/National Building Code 1984 of the Building Officials and Code Administrators International, Inc. (N.J.A.C. 5:23-3.14):

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

[(3) Section 713.0 of Article 7—Interior Environmental Requirements;] Renumber (4)-(11) as (3)-(10) (No change in text.)

ii. (No change.)

iii. BOCA Basic/National Mechanical Code/1984 of the Building Officials and Code Administrators International, Inc. (N.J.A.C. 5:23-3.20):

(1) Article 4—Mechanical Equipment.

(2) Article 5—Kitchen Exhaust Equipment.

(3) Article 10—Combustion Air.

2. (No change.)

(b) Rules concerning modification to subcodes are as follows:

1. The modifications made to the appropriate portion of the adopted model code in N.J.A.C. 5:23-3.14 (Building Subcode), [and] N.J.A.C. 5:23-3.16 (Electrical Subcode) and N.J.A.C. 5:23-3.20 (Mechanical Subcode) will apply also to those portions as regards this adoption.

5:23-3.20 Mechanical Subcode

(a) Rules concerning subcode adopted are as follows:

1. (No change.)

2. The [1985] 1986 Accumulative supplement to the BOCA Basic/National Mechanical Code/1984 is adopted by reference with modifications cited in (c) below as part of the Mechanical subcode for New Jersey.

(b) (No change.)

(c) The following articles or sections of the [1985] 1986 Accumulative supplement to the Mechanical subcode are modified as follows:

1. (No change.)

i. (No change.)

ii. [Section M-301.1 exception is amended to delete the phrase "building code listed in Appendix A" and "NFIPA 70 listed in Appendix A" and substitute, respectively, "Building Subcode" and "the Electrical Subcode."] Sections M-301-2, M-301.4, and line 3 and exception number 8 of M-311.2 are amended to delete the phrase "building code listed in Appendix A" and substitute in lieu thereof "Building Subcode."

iii. (No change.)

2. (No change.)

i. [Delete the entire subheading "ASHRAE" and all titles under this subheading.] Under the subheading "ASHRAE" delete the following titles:

(1) Thermal Environment Conditions for Human Occupancy.

(2) Energy Conservation in New Building Design.

(3) Handbook, Fundamentals Volume.

ii. Delete the entire subheading "ASME" and all titles under this subheading.

[ii.] iii. (No change in text.)

(1) (No change.)

[iii.] iv. (No change in text.)

EDUCATION**STATE BOARD OF EDUCATION**

The following proposals are authorized by the State Board of Education, Saul Cooperman, Secretary.

Submit comments by July 16, 1986 to:
Patricia Joseph, Rule Analyst
Division of Executive Services
New Jersey State Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

(a)**Business Services****Tuition for Private Schools for the Handicapped****Proposed Amendment: N.J.A.C. 6:20.4.4**

Authority: N.J.S.A. 18A:1-1, 18A:4-15 and 18A:46-21.

Proposal Number: PRN 1986-232.

The agency proposal follows:

Summary

As of July 1, 1985, 21 private schools for the handicapped had set up commonly owned or controlled corporations. The private schools then either transferred title to fixed assets, used by the private school for the handicapped, to the related corporations or had the related corporations purchase fixed assets to be used by the private school for the handicapped. The related corporations collect rentals from the private schools for use of the fixed assets. Such rentals can exceed the cost of ownership that would be allowable had title to the fixed assets vested in the private school. This procedure also allows the related corporation to sell the fixed assets without reimbursing the program for tuition funds expended for such fixed assets. Such transactions between related parties are entered at less-than-arm's length.

It appears that the only purpose or activity of these corporations is renting buildings and equipment to the related private school for the handicapped. Such corporations give the appearance of being straw corporations used solely to disguise activities which would otherwise be non-allowable under N.J.A.C. 6:20-4.4, to divert funds intended for the education of handicapped pupils for other uses and to circumvent the surcharge and working capital restrictions contained in N.J.A.C. 6:20-4.5 and 6:20-4.6.

The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-15 and 18A:46-21, proposes to amend the rule pertaining to Tuition for Private Schools for the Handicapped, Non-allowable Costs, N.J.A.C. 6:20-4.4. The proposed amendments ensure that the tuition rates charged New Jersey public school district boards of education by private schools for the handicapped are based on the cost of service, and are reflective of an open competitive market by restricting transactions not-at-arm's length. A not-at-arm's length transaction would be limited to the cost of ownership incurred by the related party including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party.

Social Impact

The proposed amendment will impact all handicapped students attending private schools for the handicapped and the New Jersey district boards of education responsible for payment of tuition, since they impact the amount of tuition which can be charged. The amendments will reduce the cost of service by eliminating the inflation of building and equipment costs through the practice of setting up commonly owned or controlled corporations to own fixed assets.

The proposed amendment will also protect the original intent of N.J.A.C. 6:20-4.4. The proposed amendment will protect the State's right to regulate working capital funds and surcharges, as well as keeping all funds under the scope of State review.

Economic Impact

The proposed amendment will impact all New Jersey district boards of education and taxpayers. Taxpayers and district boards of education will be responsible to pay only the actual cost of operating a private school for the handicapped; including a 2.5 percent return on the cost of ownership of the building, if it is rented from a related party. They will only be permitted to subsidize a 2.5 percent return on the ownership of a school facility which would be in addition to the allowable working capital or surcharge provided under N.J.A.C. 6:20-4.5 and 6:20-4.6.

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

6:20-4.4 Non-allowable costs

(a) A cost which is not allowable in the calculation of a tuition rate includes the following:

1.-35. (No change.)

36. Rental costs for buildings and equipment when owned by a parent organization not separately incorporated;

37. Certain costs related to transactions between related parties in which one party to the transaction is able to control or substantially influence the actions of the other. Such transactions are defined by the relationship of the parties and include but are not limited to those between divisions of an institution; institutions or organizations under common control through common officers, directors, or members; and an institution and a director, trustee, officer, or key employee of the institution or his or her immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. Such costs shall include:

i. Rental costs for buildings and equipment in excess of the actual allocated costs of ownership (such as straight line depreciation, mortgage interest, real estate taxes, property insurance and maintenance costs) incurred by the related property owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The lease agreement shall include a list of anticipated costs to be incurred by the property owner, prepared in the format supplied by the Department of Education, signed by the property owner and notarized;

ii. Rental costs under a sub-lease arrangement with a related party for buildings and equipment in excess of the actual allocated costs related to the lease (such as rent, lease commission expense, and maintenance costs) incurred by the sub-lessor. No profit, return on investment or windfall of any kind shall be included in the sub-rental cost. The sub-lease agreement shall include a list of anticipated costs to be incurred by the sub-lessor, signed by the sub-lessor and notarized;

iii. Cost of purchasing buildings, equipment or other goods from related parties in excess of the original cost to the related party less depreciation calculated using the straight line method;

iv. Cost of personal services paid to a related party when such services are provided by the salaried employee of the private school acting as an employee or agent of the related party;

[36.]**38. A cost found to be patently unreasonable.**

(b)**Health, Safety and Physical Education
Drugs and Alcohol****Proposed New Rules: N.J.A.C. 6:29-9**

Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:35-4, 18A:35-4a and 18A:40-4.1.

Proposal Number: PRN 1986-231.

The agency proposal follows:

Summary

The New Jersey State Department of Education proposes new rules to implement the provisions of N.J.S.A. 18A:35-4a and N.J.S.A. 18A:40-4.1.

N.J.S.A. 18A:35-4a requires that district boards of education adopt policies and procedures for the evaluation and treatment of pupils involved in incidents of alcohol possession or consumption in accordance with rules and regulations promulgated by the State Board of Education.

N.J.S.A. 18A:40-4.1 requires school staff to initiate a specific set of procedures when it appears that a pupil may be under the influence of a controlled dangerous substance or a chemical compound which releases vapor or fumes causing intoxication.

The proposed new rules, N.J.A.C. 6:29-9, address both the provisions of N.J.S.A. 18A:35-4a and N.J.S.A. 18A:40-4.1, and provides boards of education with clear guidance in the development of drug and alcohol policies and procedures.

In addition, boards of education are required by N.J.S.A. 18A:28.7 to incorporate drug education into the secondary grades health education curriculum. N.J.S.A. 18A:35-4 requires full and adequate alcohol and narcotics education in all schools, and requires the Department of Education to issue guidelines in consultation with the Department of Health to assist districts in fulfilling this requirement. Since 1981, Department of Education guidelines have recommended that drug and alcohol education be planned and treated as one course of study, and should be offered

in the curriculum from kindergarten through grade 12. The proposed new rules unify the curriculum mandate to districts regarding their responsibility to provide adequate drug and alcohol instruction.

Social Impact

The proposed new rules will have a positive impact on the public. These rules clarify the similar intent of N.J.S.A. 18A:4-28.7, 18A:35-4, 18A:35-4a, and 18A:40-4.1 regarding the responsibilities of boards of education to provide preventive drug and alcohol educational instruction, and to develop policies and procedures to handle cases of pupils' use of drugs and alcohol on school property or at school functions.

Economic Impact

The department conducted a survey of school district curricula and policies regarding alcohol use and abuse in 1983. Based on the high level of compliance with existing statutory requirements reported, the adoption of these rules is not expected to cause any increase in economic impact upon the operations of educational agencies or the public.

Full text of the proposed new rule follows:

SUBCHAPTER 9. DRUGS AND ALCOHOL

6:29-9.1 Purpose

The rules in this subchapter are designed to provide guidance to district boards of education in their development of policies and procedures to evaluate and treat pupils who have alcohol and drug related problems in the school setting.

6:29-9.2 Definitions

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

"Evaluation" includes, but is not limited to, the following:

1. Procedures used to determine a pupil's need for an educational program which extends beyond the regular school program;
2. Examination by a physician for the purpose of diagnosing whether the pupil is under the influence of alcohol and/or other drugs;
3. Evaluation by the child study team to determine a pupil's eligibility or need for a special education program and/or related services due to involvement or consumption of alcohol or other drugs.
4. Assessment by a teaching staff member or district board of education service provider appropriately trained in alcoholism or substance abuse, including but not limited to certified alcoholism or substance abuse counselors, to determine the extent of the pupil's drug or alcohol use and dependency.

"Treatment" includes, but is not limited to, the following:

1. Provisions for program instruction, counseling and related services provided by the board of education or its service providers while a pupil is receiving medical or therapeutic care for a diagnosed drug or alcohol dependency problem;
2. Referral to a community agency recommended by the County Alcoholism Authority or the State Department of Health;
3. Providing support services for pupils who are in care or returning from care for drug or alcohol dependency;
4. A special class or course designed to meet the needs of pupils with drug or alcohol use problems.

6:29-9.3 Adoption of policies and procedures

(a) District boards of education shall adopt and implement policies and procedures for the evaluation and treatment of pupils who possess, consume or who on reasonable grounds are suspected of being under the influence of the following substances:

1. Alcoholic beverages;
2. Any controlled dangerous substance, as identified in N.J.S.A. 24:21-2; and/or
3. Any chemical or chemical compound which releases vapor or fumes causing a condition of intoxication, inebriation, excitement, stupefaction, or dulling of the brain or nervous system including but not limited to glue containing a solvent having the property of releasing toxic vapors or fumes, as defined in N.J.S.A. 2A:170-25.9.

(b) In adopting and implementing policies and procedures for the evaluation and treatment of drug or alcohol affected pupils, district boards of education shall consult with local agencies recommended by the State Department of Health.

(c) Drug and alcohol policies of district boards of education shall include, but not be limited to the following components:

1. The roles of appropriate school staff when handling a variety of possible drug or alcohol related situations involving pupils on school property or at school functions;

2. Specific procedures, sanctions and due process provisions for violations of the drug and alcohol policy requiring disciplinary action by the district board of education. The sanctions should be graded according to the severity of the offense;

3. Specific procedures to govern instances where emergency room services are required in treating alcohol and/or drug affected pupils;

4. Provisions for the inclusion of law enforcement authorities when warranted;

5. The provision of evaluation and treatment services for pupils who are affected by drug or alcohol use.

(d) The policies and procedures for the evaluation and treatment of drug and alcohol affected pupils developed under this section shall be reviewed and approved by the Department of Education.

6:29-9.4 Review and availability of policies and procedures

(a) Each district board of education shall establish an annual process to review the effectiveness of its alcohol and drug policies and procedures. The district board of education shall solicit community input as well as consult with local agencies recommended by the State Department of Health in the review process.

(b) Drug and alcohol policies and procedures for discipline, evaluation, and treatment of pupils shall be made available annually to all school staff, pupils, and parents or guardians.

6:29-9.5 Reporting, notification and examination procedures

(a) In instances involving alcoholic beverages, the following shall apply:

1. Any professional staff member having reason to believe that a pupil is under the influence of alcoholic beverages on school property or at a school function shall report the matter as soon as possible to the school nurse or medical inspector and the principal.

- i. In the absence of the principal, his or her designee shall be notified.

- ii. In instances where the school nurse, medical inspector and the principal are not in attendance, the staff member responsible for the school function shall be immediately notified.

2. The pupil shall be removed to a protective environment for observation and care by the school nurse or medical inspector until his or her parent(s) or guardian(s) can be contacted to take the pupil home. The principal shall request the assistance of the school nurse or medical inspector in assessing the physical state of the pupil. This shall not be construed to limit or condition the right of a district board of education to seek emergency medical assistance for a pupil when acting in loco parentis, and as an agent of the parent(s) or guardian(s), and for the welfare of the pupil.

3. The pupil's parent(s) or guardian(s) and the chief school administrator shall be immediately notified of the incident and shall be provided a description of the situation and symptoms.

4. When the principal has completed his or her investigation, a conference shall be arranged with the pupil and his or her parent(s) or guardian(s).

5. A plan to address those specific needs which the pupil may have shall be developed following the parent conference.

6. The district's policy shall provide for the evaluation and treatment of pupils who are suspected of the use, possession or consumption of alcoholic beverages in school or at school functions.

7. In instances where there is any doubt regarding the nature of the substance(s) affecting a pupil, the provisions outlined in (b) below shall be followed.

8. In all instances involving the use of alcoholic beverages a "Violence, Vandalism and Substance Abuse Incident Report" shall be completed.

(b) In instances involving controlled dangerous substances or any chemical or chemical compound as identified in N.J.A.C. 6:29-9.3(a)2 and 3, the following shall apply:

1. Any professional staff member to whom it appears that a pupil may be under the influence of intoxicating drugs on school property or at a school function shall report the matter as soon as possible to the school nurse or medical inspector and the principal.

- i. In the absence of the principal, his or her designee shall be notified;

- ii. In instances where the school nurse, medical inspector or the principal are not in attendance, the staff member responsible for the school function shall be immediately notified.

2. The principal or his or her designee shall immediately notify the parent or guardian and the chief school administrator and arrange for an immediate examination of the pupil. The examination may be performed by a physician selected by the parent or guardian or by the medical inspector. If the chosen physician is not immediately available, the examination shall be conducted by the medical inspector or, if the

medical inspector is not available, the pupil shall be accompanied by a member of the school staff, designated by the principal, to the emergency room of the nearest hospital for examination. If available, a parent or guardian should also accompany the pupil.

3. If, at the request of the parent or legal guardian, the medical examination is conducted by a physician other than the medical inspector, such examination shall not be at the expense of the district board of education.

4. A written report of the medical examination shall be furnished to the parent or guardian of the pupil, the principal and the chief school administrator by the examining physician within twenty-four hours.

5. If there is a positive diagnosis from the medical examination indicating that the pupil is under the influence of intoxicating drugs, the pupil shall be returned to the care of a parent or guardian as soon as possible. Attendance at school shall not resume until a written report has been submitted to the parent or guardian of the pupil, the principal and chief school administrator from a physician who has examined the pupil to diagnose drug use. The report shall certify that the pupil is physically and mentally able to return to school. In addition, the staff member shall complete the "Violence, Vandalism and Substance Abuse Incident Report."

6. While the pupil is at home because of the medical examination, or after his or her return to school, the school may require additional evaluation for the purpose of determining the extent of the pupil's drug use and its effect on his or her school performance.

7. The district's policy shall provide for the evaluation and treatment of pupils whose use of drugs has affected their school performance or who possess or consume drugs in school or at school functions.

8. Any staff member who reports a pupil to the principal or his or her designee in compliance with the provisions of this subsection shall not be liable in civil damages as a result of making such a report as specified by N.J.S.A. 2A:62A-4 and as provided for under N.J.S.A. 18A:40-4.2.

6:29-9.6 Curriculum and instruction

(a) Each school district having secondary school grades shall incorporate a drug and alcohol education unit into its health education curriculum in accordance with existing Department of Education guidelines. A minimum of 10 clock hours per school year of drug and alcohol education shall be provided pursuant to N.J.S.A. 18A:4-28.7.

(b) Each school district having elementary school grades shall incorporate into its curriculum drug and alcohol education appropriate for the pupil's age, maturity, and grade level in accordance with existing Department of Education guidelines.

ENVIRONMENTAL PROTECTION

The following proposals are authorized by Richard T. Dewling, Commissioner, Department of Environmental Protection.

DIVISION OF WATER RESOURCES

(a)

Flood Hazard Area Delineation Delineations of the East Branch of the Stony Brook and Tributaries A and B of the South Branch of Rockaway Creek within the Raritan Basin, and Whale Pond Brook within the Atlantic Basin.

Proposed Amendment: N.J.A.C. 7:13-7.1

Authority: N.J.S.A. 13:1D-1 et seq. and 58-16A-50 et seq.

DEP Docket No. 026-86-05.

Proposal Number: PRN 1986-244.

A public hearing on the proposal will be held on:

July 16, 1986 at 1:00 P.M.
Department of Environmental Protection
Division of Water Resources, Conference Room A
1474 Prospect St.
Trenton, NJ

Submit written comments by July 30, 1986 to:

Clark Gilman
Department of Environmental Protection
Division of Water Resources
Bureau of Flood Plain Delineation
CN 029
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Environmental Protection (Department) proposes to revise the flood hazard area delineations for the East Branch of Stony Brook and Tributaries A and B of the South Branch of Rockaway Creek and of Whale Pond Brook pursuant to the Flood Hazard Area Control Act, N.J.S.A. 58:16A-1 et seq. These flood hazard areas were previously delineated by the Department. As a result of having received additional data and analyses, the Department is obliged to update the present delineation to reflect this new information.

Social Impact

By delineating a stream or river, the Department applies its regulatory jurisdiction under the Act to the "flood fringe," as defined under the Flood Hazard Area Control Regulations, N.J.A.C. 7:13-1 et seq. As part of an application for a Stream Encroachment Permit, the applicant must accurately locate the lines which delineate the floodway and the outer edge of the flood fringe. As the detailed data and analyses are received by the Department, the new information is added to that which describes the existing delineation. Since the revision is a step in the process of application of the original delineation to a specific proposed development project, it has no additional impact beyond that intended and foreseeable from the original delineation.

Economic Impact

Since the proposed amendment is the result of the application of the existing delineation to a specific project, there is no economic impact resulting from this proposal, beyond what was reasonably foreseeable at the time of the original delineation. Though the original delineation of the waterways involved here certainly resulted in calculable impact, the proposed revision does not.

Environmental Impact

As in the case of the other areas of potential impact discussed above, no environmental impacts will result from this proposed amendment. Revision of the present delineations is needed so that they will reflect the more accurate data and analyses now available.

7:13-7.1 Delineated floodways

No change in the text of N.J.A.C. 7:13-7.1 (b) and (d) is required.

Maps and associated flood profiles, showing the location of the revised delineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Bldg. 9, Trenton, N.J., and at the Bureau of Flood Plain Delineation, 1911 Princeton Ave., Lawrenceville, NJ.

(b)

OFFICE OF SCIENCE AND RESEARCH OFFICE OF QUALITY ASSURANCE

Laboratory Certification and Standards of Performance

Proposed Readoption: N.J.A.C. 7:18

Authority: N.J.S.A. 13:1D-1 et seq., 58:10A-1 et seq., and

58:12A-1 et seq.

Proposal Number: PRN 1986-242.

DEP Docket No. 025-86-05.

Submit comments by July 16, 1986 to:

Dr. Thomas A. Burke, Director
Office of Science and Research
Department of Environmental Protection
CN 409
Trenton, New Jersey 08625

Summary

Pursuant to the "sunset" provisions of Executive Order No. 66(1978), N.J.A.C. 7:18 will expire on August 6, 1986. The Department of Environmental Protection (Department) proposes to readopt the current text of this chapter without change.

N.J.A.C. 7:18 provides for the regulation and administration of a laboratory certification program for drinking water and wastewater, under the Office of Quality assurance in the Office of Science and Research. The proposed readoption is essential to continue in full force and effect this laboratory certification program mandated by the Federal and State Safe Drinking Water Acts (21 U.S.C. §349, 42 U.S.C. §§201, 300f et seq., and 7410 et seq. and N.J.S.A. 58:12A-1 et seq.) and the Federal

and State Water Pollution Control Acts (33 U.S.C. §1215 et seq. and N.J.S.A. 58:10A-1 et seq.).

The Department is currently developing amendments to this chapter in order to revise and upgrade these regulations to include additional State and Federal programs. It is anticipated that the Department will propose these amendments later this year.

A summary of the text of N.J.A.C. 7:18 follows:

7:18-1.1 Scope and authority; (1) explains that this chapter establishes the procedures for obtaining and maintaining certifications and establishes the criteria and procedures that laboratories shall follow in analyzing water samples, and (2) lists the statutes that delegate the appropriate authority to the laboratory certification program.

7:18-1.2 Construction; directs that this chapter be liberally construed to effectuate the purposes of the laboratory certification program.

7:18-1.3 Purpose of the regulations; establishes the rationale for promulgating the chapter.

7:18-1.4 Certification program requirements; states that laboratories wishing to participate in the laboratory certification program shall follow the procedures described in this chapter.

7:18-1.5 Incorporation by reference; adopts and incorporates those analytical methodologies required by the federal statutes.

7:18-1.6 Program information; designates a point of contact within the department for all information regarding the laboratory certification program.

7:18-1.7 Definitions; lists key terms and their definitions as they apply to the regulations.

7:18-1.8 Severability; provides for the validity of the remainder of this chapter should any portion thereof be adjudged invalid by a court of competent jurisdiction.

7:18-2.1 Requirement of certification; mandates that laboratories which report environmental measurement data to the department for assessment of compliance with the Safe Drinking Water and Water Pollution Control Acts must be certified by the department. This section also provides for reciprocal certification of laboratories located in states which maintain an equivalent or more stringent certification program, provided that the laboratory is certified by that state.

7:18-2.2 Categories for certification; outlines the major testing categories for which certification is available.

7:18-2.3 Application procedures for laboratories located in New Jersey; describes the processes for filing applications, submitting fees and personnel qualifications, demonstrating proficiency through analysis of performance evaluation samples, and completing an on-site evaluation of the laboratory facilities by department inspection personnel.

7:18-2.4 Procedures for laboratories not located in New Jersey; outlines procedures as stated in N.J.A.C. 7:18-2.3 and sets forth the requirements for reciprocity with other state certification programs.

7:18-2.5 Renewal of certification; requires that certified laboratories which wish to remain in the program submit renewal applications and applicable fees to the department each June.

7:18-2.6 Fees; lists the annual fees required for certification in each of the major categories.

7:18-2.7 Required laboratory personnel policies; describes general requirements for designation of laboratory managers, supervisors, and technical personnel. This section also defines education and experience requirements for laboratory supervisors and technical personnel.

7:18-2.8 Duties and responsibilities of laboratory personnel; defines general responsibilities of laboratory managers and supervisors.

7:18-2.9 Management of laboratories; describes general practices for providing analytical services to clients and for accepting samples.

7:18-2.10 Proficiency testing; outlines requirements and time frames for participation in the program's ongoing performance evaluation process necessary for maintaining or expanding a laboratory's certification.

7:18-2.11 Laboratory inspections; defines the process for on-site evaluations of laboratories.

7:18-2.12 Cancellation, suspension, and revocation of certification; describes the department's policies for cancellation of certification of the laboratory and the suspension and revocation of a laboratory's certification by the department in the course of enforcement of this chapter.

7:18-2.13 Effect and duration of suspension, notification and revocation orders; states that laboratories are not permitted to report data to the department when their certification is suspended or revoked. Suspensions shall not be withdrawn until all bases for the suspension have been rectified. Laboratories must reapply for certification after their certification has been revoked. This section also provides for administrative hearings after a laboratory receives a revocation order from the department.

7:18-2.14 Information to State; requires that laboratories notify the department in the event there are any changes in the laboratory name, location, post office address, or telephone number.

7:18-3 Criteria for microbiological testing and analysis; lists all of the requirements with which a laboratory must be in compliance in order to obtain and maintain microbiological certification. The sections include requirements for laboratory facilities and safety; laboratory equipment, supplies, and materials; sample collection, handling, and preservation; methodologies; general laboratory practices; quality control programs; and records and data reporting.

7:18-4 Criteria for chemical testing and analysis; lists all of the requirements with which a laboratory must be in compliance in order to obtain and maintain chemical certification. The sections include requirements for laboratory facilities, and safety; laboratory equipment, supplies, and materials; sample collection, handling, and preservation; methodologies; general laboratory practices; quality control programs; and records and data reporting.

7:18-5 Criteria for radiological testing and analysis; lists all of the requirements with which a laboratory must be in compliance in order to obtain and maintain radiological certification. The sections include requirements for laboratory facilities and safety; laboratory equipment, supplies, and materials, sample collection, handling, and preservation; methodologies; general laboratory practices; quality control programs; and records and data reporting.

7:18-6 Criteria for bioassay testing and analysis; lists all of the requirements with which a laboratory must be in compliance in order to obtain and maintain bioassay certification. The sections include requirements for laboratory facilities and safety; laboratory equipment, supplies, and materials; sample collection, handling, and preservation; methodologies; general laboratory practices; quality control programs; and records and data reporting.

Social Impact

Readoption of these rules will continue to provide a process by which the department can assure the quality and reliability of environmental measurement data submitted to the department for use in its mission to protect public health and the environment. The results of sample analyses are used to ensure that New Jersey's citizens consume safe drinking water and may safely use New Jersey's other aquatic environmental resources, such as lakes, streams, reservoirs and bays. The laboratory certification program helps to protect the public from incorrect or improper analytical assessment of these resources.

Economic Impact

Readoption of these rules will have no additional economic impact. The present economic impact is a result of fees collected from those laboratories which elect to participate in the certification program of the Department of Environmental Protection. To date, fees collected for the 1986 fiscal year were \$251,300. Fees are utilized to assist in covering the costs of administering the program. The continued collection of these fees has a minor impact on the cost of sample analysis at certified laboratories.

Environmental Protection

Continuation of the laboratory certification program will help assure the quality and reliability of the environmental measurement data submitted by certified laboratories to the department for use in administering certain environmental programs. Those programs relying on laboratories certified by the department should be positively affected by the proposal.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:18.

HEALTH

The following proposals are authorized by J. Richard Goldstein, M.D., Commissioner, Department of Health; with the approval of the Health Care Administration Board.

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT**(a)****Renal Disease Services
Standards and General Criteria for the Planning and
Certification of Need for Regional End-Stage
Renal Disease Services****Proposed Amendment: N.J.A.C. 8:33F-1.2**

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Proposal Number: PRN 1986-235.

Submit comments by July 16, 1986 to:

John A. Calabria, Chief
Health Systems Review
N.J. Department of Health
CN 360, Room 604
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Health has recently been notified by the Federal Government's Health Care Financing Administration that continuous ambulatory peritoneal dialysis (CAPD) must be specifically referenced in State regulation for a Certificate of Need to be required.

While the existing New Jersey State regulations concerning Regional End-Stage Renal Disease Services (N.J.A.C. 8:33F-1 et seq.) require a Certificate of Need prior to the establishment of peritoneal dialysis, self-care and home dialysis training, there is no specific reference or identification in the regulations regarding continuous ambulatory peritoneal dialysis. Although the Department of Health's regulatory intent has always included continuous ambulatory peritoneal dialysis as a form of chronic peritoneal dialysis which requires self-care and home training, it was determined that specific reference at this time would thoroughly comply with Section 5221(b) of the Health Care Financing Administration's regional office manual and resultantly meet all federal expectations and requirements.

Certificate of Need regulation of all continuous ambulatory peritoneal dialysis provides significant social impact. Patients requiring CAPD will now be assured of quality instruction and training provided by qualified and responsible staff in an atmosphere offering equivalent levels of both peritoneal dialysis and hemodialysis treatment. This continuum of care assures high quality and continuity of service for patients in need. Applicants requesting permission to furnish continuous ambulatory peritoneal dialysis, training and supply services to patients are eligible for Medicare program End-Stage Renal Disease payment, and will be expected to provide the service in the most efficient and economical manner possible.

Social Impact

The proposed amendments will have positive social impact because patients requiring CAPD will be assured of quality instruction and training provided by qualified and responsible staff and applicants will be required to meet applicable State planning and licensing standards. In accordance with Federal regulatory conditions (42 CFR 405) the director of the renal dialysis center or facility must assure that personnel involved in training have adequate knowledge of the CAPD process. A nurse must be designated as responsible for CAPD training and have documented experience in peritoneal dialysis and in the care and maintenance of peritoneal access devices. A number of support services must also be furnished to a patient upon completion of CAPD training. These include:

- a. Surveillance of the CAPD patient's home adaptation, including provisions for visits to the home or patient visits to the facility;
- b. Consultation for the CAPD patient with a qualified social worker and a qualified dietitian;
- c. A recordkeeping system which assures continuity of care for the CAPD patient;
- d. Ordering of CAPD supplies on an ongoing basis;
- e. On periodic visits, at least once every 90 days, the sponsoring CAPD facility monitors the CAPD patient's medical condition, reviews his con-

tinuing capability to perform CAPD and records whether the patient has, or has had, peritonitis requiring physician or hospital care; and
f. Hemodialysis or intermittent peritoneal dialysis as required.

Economic Impact

There is no anticipated economic impact other than the fact that the Medicare program will now only reimburse CAPD treatment, training, and support services for providers with approved certificates of need.

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

8:33F-1.2 Utilization standards

(a) The following minimum utilization rates shall apply for the initiation of new ESRD services:

1.-4. (No change.)

5. Self-care and home dialysis training:

i. Each application for a certificate of need from an approved ESRD facility which proposes to offer self-care and home dialysis training for **all forms of chronic hemodialysis and chronic peritoneal dialysis, including continuous ambulatory peritoneal dialysis (CAPD)**, must provide written evidence of:

(1) ESRD projections and description of the methodology by which projections were determined;

(2) Expected sources of patient referrals, including anticipated number of referrals by sources;

(3) Plans to meet the self-care level of the goals proposed by the New Jersey Renal Disease Network (see Appendix A), the Health Systems Plan and the State Health Plan; and

(4) Qualified training personnel.

ii. The Department will require impact statements from approved area facilities already providing the service(s), describing the anticipated effects of the proposed service upon the type(s), scope, cost or organization of health care services within the proposed service area.

6.-7. (No change.)

8. Chronic peritoneal dialysis:

i. Chronic peritoneal dialysis, **which includes all chronic ambulatory peritoneal dialysis (C.A.P.D.), continuous cycling peritoneal dialysis (C.C.P.D.), intermittent peritoneal dialysis (I.P.D.), and all other related chronic dialysis services utilizing the peritoneal membrane, as well as self-care and home training services for these modalities**, is regulated by certificate of need at the present time. The choice of delivery of dialysis, whether by hemodialysis or peritoneal dialysis, is a medical choice, and both services should be available for the patient. It is not in the best interest of patients to have a unit approved for one service without the other. The Department of Health will not recommend or approve an applicant seeking to establish a chronic or self-care training program for peritoneal dialysis unless the applicant is already approved for the same levels of hemodialysis.

(b) (No change.)

(b)**DIVISION OF HEALTH FACILITIES EVALUATION****Long-Term Care Facilities****Standards for Licensure****Proposed Amendment: N.J.A.C. 8:39-3.11**

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

Proposal Number: PRN 1986-236.

Submit comments by July 16, 1986 to:

Wanda J. Marra, Coordinator
Standards Program
Division of Health Facilities Evaluation
Department of Health
CN 367
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The current Standards for Licensure of Long-Term Care Facilities, N.J.A.C. 8:39, became effective on June 20, 1983, pursuant to authority of N.J.S.A. 26:2H-1 et seq. The current rules, N.J.A.C. 8:39, supersede all rules and amendments adopted prior to June 20, 1983, for long-term care facilities, nursing homes, and intermediate care facilities.

N.J.A.C. 8:39 contains rules for licensure of long-term care facilities by the Department of Health, and serves to protect the health and safety of patients within these facilities. The current text of N.J.A.C. 8:39-3 specifies the general requirements for the operation of a long-term care facility and includes: compliance with standards and laws; ownership; submission of documents; personnel; policy and procedure manual; staffing; consultant services; patient transportation; transfer agreement; reportable events; and notices.

The Department is proposing to amend N.J.A.C. 8:39-3.11(a) by requiring that the hours of availability of information regarding the operation of the facility be extended to correspond with visiting hours, 8:00 A.M. to 8:00 P.M. In addition, the Department is proposing to amend N.J.A.C. 8:39-3.11(a)3 by requiring that the facility post a notice that a list of deficiencies from any valid complaints during the past 12 months is also available.

Currently, N.J.A.C. 8:39-3.11(a)1 through 8:39-3.11(a)8 specifies that the long-term care facility shall conspicuously post a notice that the following information is available in the facility, during business hours, to patients, their next of kin and/or sponsors and/or guardians, and the public: all waivers granted by the Department; all documents required by this chapter; a list of deficiencies from the last annual licensure inspection and certification survey report (if applicable); a list of the facility's committees, and the membership, minutes, and annual reports of each; the names and addresses of members of the governing authority; any changes of membership of the governing authority, at least within 30 days of the change; policies and procedures regarding patient rights, obligations, and prohibitions, as set forth in N.J.S.A. 30:13-1 et seq.; and visiting hours and business hours, including the policies of the facility regarding limitations and activities during these times.

The proposed amendment to N.J.A.C. 8:39-3.11(a) increases the time period during which the information specified in N.J.A.C. 8:39-3.11(a) is available to coincide with the facility's visiting hours which are 8:00 A.M. to 8:00 P.M. as established by N.J.S.A. 30:13-1 et seq., P.L. 1976, Chapter 20. Currently, the information is to be made available during the facility's business hours. The Department has given each long-term care facility the flexibility to establish their own business hours, which could vary in each facility. The proposed amendment to N.J.A.C. 8:39-3.11(a)3 requires the long-term care facility to make available the list of deficiencies from any valid complaint investigation during the past 12 months, as well as the deficiencies from regular licensure inspections and certification survey reports.

The Department contends that the proposed amendments to N.J.A.C. 8:39-3.11(a) are necessary because they will make the required information and additional information more accessible to patients, consumers, and the public. The Department has been alerted to the need for this additional information and for the extended hours of availability, and contends that the amendments will benefit patients, consumers, and the public in their "right to know" about the operation of the long-term care facility. This increased knowledge will ultimately have an impact on the quality of care provided to patients.

Social Impact

The proposed amendments to N.J.A.C. 8:39-3.11(a) will have a beneficial social impact for the patients, consumers, and public. Information concerning the long-term care facility will now be available for an extended period of time, 8:00 A.M. to 8:00 P.M., and will hopefully be more adaptable to the work schedules of the consumers and public who might not otherwise be available during the established business hours of the facility. The increased availability of information, as well as the additional information, regarding the operation of the facility will enable the patients, consumers and public to make more informed decisions about the placement of patients and quality of care provided to patients. The patients, consumers, and public have the right to know and to be informed of problems that have been identified within a facility. This awareness will make patients, consumers, and the public more observant of the possible existence of problems at a facility and should enable patients, consumers, and the public to take a more active role in monitoring a facility's performance to maintain the quality of patient care.

The proposed amendments will also strengthen the Department of Health's enforcement of regulatory activities by posting the availability of information to the consumer and public, thus assisting the Department's efforts to maintain quality care to patients.

Economic Impact

The proposed amendments to N.J.A.C. 8:39-3.11(a) will improve quality of care and cost-effectiveness of services provided in long-term care facilities at no increased cost to the Department or public.

The patient, consumer, and public will serve as an oversight mechanism to monitor compliance with Departmental rules and regulatory activities by being alerted to any problems and deficiencies identified. This will allow the patients, consumers, and the public to take a more active part in improving the quality of life and care on behalf of patients and will protect those patients unable to take more responsibility for their own care and treatment. Patients, consumers, and the public will have increased awareness of the rules affecting long-term care facilities and will have increased time to access the necessary information in order to monitor compliance.

The proposed amendments are not expected to increase costs to the long-term care facility since N.J.A.C. 8:39-3.11(a) involves only the posting of a notice. A procedure for posting notices and making information available to patients, consumers, and the public should already be established as part of the existing licensure requirements. No additional procedure would be necessary.

No additional personnel expenses should be incurred by long-term care facilities in providing access to information during visiting hours, as proposed by the amendment to N.J.A.C. 8:39-3.11(a). Each facility is required to have a licensed administrator or his or her alternate on the premises of the facility at all times pursuant to N.J.A.C. 8:39-5.1(a)3.

No additional expense will be incurred by the Department in implementing the proposed amendments, since a licensure and surveillance program is in effect.

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

8:39-3.11 Notices

(a) The facility shall conspicuously post a notice that the following information is available in the facility, during [business hours] **visiting hours, 8:00 a.m. to 8:00 p.m. daily**, to patients, their next of kin and/or sponsors and/or guardians, and the public:

1.-2. (No change.)

3. A list of deficiencies from the last annual licensure inspection and certification survey report (if applicable) [;] **and the list of deficiencies from any valid complaint during the past 12 months;**

4.-8. (No change.)

(b) (No change.)

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Hospital Capital Policy

Proposed New Rules: N.J.A.C. 8:43G

Authority: N.J.S.A. 26:2H-1 et seq., specifically, 26:2H-5.
Proposal Number: PRN 1986-234.

A public hearing concerning this proposal will be held on:

Thursday, July 10, 1986 at 1:00 P.M.
New Jersey Department of Health
Room 103, First Floor
Market and South Warren Streets
Trenton, New Jersey 08625

Submit comments by July 16, 1986 to:

John A. Calabria, Chief
Health Systems Review
New Jersey Department of Health
Room 604
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

The 1971 Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq., as amended) requires the Department to assure that New Jersey's hospital and related health care services are of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost. To implement this public policy, Public Law 1971 Chapter 136 gave the Department of Health broad responsibilities in regulating the health care system through authorization of the Certificate of Need Program.

The Department initially adopted N.J.A.C. 8:43E, The Policy Manual for Planning and Certificate of Need Reviews of Health Care Facilities

and Services within the State of New Jersey (The Hospital Policy Manual) on April 21, 1977. In view of the significant changes that have occurred in the health care system since 1977, the Department proposed the first major revisions to the existing rules in April 1985. In developing the proposed changes, the Commissioner obtained the recommendations and approval of the Statewide Health Coordinating Council (SHCC). Following approval for initial publication by the Health Care Administration Board, these proposed amendments to the Hospital Policy Manual underwent a 30-day public comment process.

Although several changes were incorporated into the amendments as a result of comments, the Department postponed submission of final rules to the Health Care Administration Board, pending further study of proposed federal limitations on reimbursement of hospital capital expenditures. Based on an analysis of New Jersey hospitals' overall current level of debt financing, it was indicated that a major financial shortfall would occur within the industry unless changes were initiated in the way New Jersey allocated and reimbursed capital. It also became evident that downward trends in hospital utilization were creating a significant problem of excess bed capacity.

The process of developing and analyzing changes to New Jersey's hospital reimbursement and planning regulations to reflect changing conditions in the health care system has been ongoing through 1985 and 1986. Concurrent to this process has been a delay in the processing of all major hospital construction and modernization/renovation projects with costs in excess of \$10,000,000.

While final resolution has not fully been reached on the many issues being addressed, there are many necessary hospital modernization/renovation projects that the Department believes cannot be delayed any further. Therefore, standards and criteria by which major capital investment proposals will be reviewed under Certificate of Need have been developed and are proposed in these rules. These Capital Policy Rules are intended to be utilized for, the October 15, 1986 batching cycle for hospital bed additions and modernization/renovation and new construction projects in excess of \$5,000,000 project costs. The rules propose two interim changes to the Certificate of Need batching rules identified at 8:33-1.5(d). First, the \$10,000,000 threshold noted at 8:33-1.5(d) is reduced to \$5,000,000 for batching of all hospital modernization/renovation applications. The second change is to defer future batching cycles until final adoption of amendments to the Hospital Policy Manual, (N.J.A.C. 8:43E). These proposed Capital Policy Rules are intended to be repealed at that time, as capital policy will be integrated into the Hospital Policy Manual. The Hospital Policy Manual amendments published in the New Jersey Register on April 21, 1986 at 18 N.J.R. 825 are not being scheduled for final adoption discussions by the Health Care Administration Board until further resolution of many key issues is reached.

The proposed Capital Policy rules will establish community need standards that will assess current and future need for hospitals in their area, institute financial feasibility as a criteria for approval, and establish an overall minimum occupancy target for hospitals at 75 percent.

The overall purpose of the proposed rules is to identify policies, standards and criteria which shall be used by the Department of Health, the Statewide Health Coordinating Council, and the Health Systems Agencies to guide the planning and review of all Certificate of Need applications submitted by hospitals for major modernization/renovation projects in excess of \$5 million for the October 15 cycle exclusively. The rules will not govern Certificate of Need applications for projects in which separate and specific regulations have been adopted, such as Perinatal Services, (N.J.A.C. 8:33E-2) or Regional End-Stage Renal Disease Services (N.J.A.C. 8:33F).

The rules contained in the Hospital Policy Manual (N.J.A.C. 8:43E-1.1) have been found since 1977 to generally be effective in their ability to promote quality of care, accessibility, and cost effective utilization of hospital services in New Jersey. The rapidly escalating costs of the health care system evidenced nationally have not been experienced to the same extent in this state. This can in part be attributed to the authority afforded to the Department of Health by these rules to guide the planned growth of hospital services and beds.

Social Impact

N.J.S.A. 26:2H-1 (as amended) recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facili-

ties and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs. . . ."

The New Jersey State Health Plan recognizes the underutilization of inpatient beds, specialty services, and expensive equipment as an important factor contributing to the increased costs of health care. Regionalization of specialty services and equipment is viewed as an important mechanism for promoting health by improving the capabilities of services and quality of care offered, by improving the solvency of hospitals offering these expensive services, and by containing the rising costs of health care services.

The Department of Health has implemented public policy that has been directed towards both improving the health of residents and towards increasing the accessibility, acceptability, continuity, and quality of services provided to them. Through these rules, hospitals submitting Certificate of Need applications proposing major capital investments must demonstrate current and future need for its services in the community, need for the renovations it proposes, and financial feasibility of the project. The rules promote increased efficiency, appropriate reductions in excess capacity, and mergers and joint hospital planning.

New Jersey's 90 general hospitals accounted for over 1 million admissions in 1985, resulting in a total of over 8.2 million patient days. The structure and design of the health care system as promoted by these rules has a significant impact on the lives and well-being of New Jersey's residents.

Economic Impact

Total annual capital reimbursement to New Jersey general acute care hospitals was \$322 million in 1984 and \$370 million in 1985, and is projected to be \$400 million in 1986 and at least \$500 million in 1990. These levels will be evident even if no other Certificates of Need are granted. Through application of the Hospital Policy Manual and other planning regulations, a significant number of proposed capital projects have been denied Certificates of Need by the Commissioner of Health; without such denials, the actual and projected levels of capital reimbursement would be even higher. The Hospital Policy Manual, therefore, has provided the Department with an essential means to objectively assess and evaluate the need for new services, facilities and plant modernization and impact of proposed new capital and operating expenditures. These proposed Capital Policy Rules are intended to offer an effective means to measure the need for and impact of a substantial level of new capital investment.

In 1984, the Governor's Advisory Committee on Capital Expenditures for Health Care Facilities recommended limiting aggregate capital reimbursement to a maximum of 7.5 percent of annual hospital expenditures. Since then, the federal Department of Health and Human Services has proposed an even stricter limit on capital reimbursement. The Department of Health estimates that, if implemented, the federal proposal would cost New Jersey hospitals at least \$100 million in lost reimbursement per year; the loss could go as high as \$250 million per year. Future policy proposals will address a restructuring of the health care delivery and financing systems to deal with whatever federal reimbursement shortfalls may actually materialize.

Maintaining an affordable health care system that addresses the real needs of New Jersey's residents for access to health care is essential. The proposed rules are critical to the Department's efforts to design a health delivery system that provides care that is of the highest quality, of demonstrated need, and both efficiently provided and properly utilized.

Full text of the proposed new rules follows:

CHAPTER 43G

CERTIFICATE OF NEED: CAPITAL POLICY RULES

SUBCHAPTER 1. STANDARDS AND CRITERIA

8:43G-1.1 Scope

The rules in this chapter are intended to provide substantive criteria for the review of Certificate of Need applications by applicants proposing major modernization/renovation or new construction projects with proposed costs in excess of \$5 million. All Certificate of Need applications for modernization renovation/new construction shall continue to be separately or concurrently reviewed under the general criteria of the existing Hospital Policy Manual (N.J.A.C. 8:43E) and under other existing Certificate of Need regulations (N.J.A.C. 8:33 or 8:43) where applicable to specific project components not addressed in these rules.

8:43G-1.2 Batching schedule

(a) The batching schedule for hospital bed additions, modernization/renovation or new construction projects in excess of \$10 million, as identified in N.J.A.C. 8:33-1.5(d), is modified as follows:

1. The processing of applications for conversion/renovation/modernization projects for cycles after October 15, 1986 is deferred until a date 60 days (to the nearest 1st of the month) following the effective date of amendments to the Hospital Policy Manual, (N.J.A.C. 8:43E) now undergoing public comment following their initial publication in the New Jersey Register (April 21, 1986—18 N.J.R. 825).

2. This rule applies to an October 15, 1986 batching cycle with a September 1, 1986 project submission date.

3. The \$10,000,000 limitation or threshold for batching is reduced to \$5,000,000 from the date of adoption of this regulation until amendments are adopted to the Hospital Policy Manual (N.J.A.C. 8:43E) as referenced in 1. above.

4. Any project submitted in the October 15, 1986 batching cycle and subsequently deferred will be reviewed using the regulations in effect at the time the CN review is conducted.

8:43G-1.3 General policies

(a) The general policies identified herein shall apply to all facilities licensed and regulated under N.J.S.A. 26:2H-1 et seq. and amendments thereto.

(b) No Certificate of Need shall be issued unless the action proposed in the application for such certificate is necessary to provide required health care in the area to be served, can be economically accomplished and maintained, and will contribute to the orderly development of adequate and effective health care services.

(c) Each Certificate of Need application shall comply with the State Health Plan and all appropriate health planning and rate setting regulations adopted by the Department of Health (with approval of The Health Care Administration Board) and should also be in compliance with the Health Systems Plan of the health system agency in which the action is planned.

(d) In reviewing Certificate of Need applications, the Department will consider as capital policy goals:

1. The reduction of duplicative services and excess bed capacity.
2. Accessibility to all inpatient and outpatient services by the medically indigent in the health care system.
3. The efficient operation of hospitals in the health care system.
4. The achievement of operational cost savings or cost avoidances as a result of proposed new capital expenditures.
5. Maintenance of a level of capital debt as appropriate to a cost efficient health care delivery system.

8:43G-1.4 Definitions

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

"Construction" means the erection, buildings, alteration, reconstruction, improvement, renovation, extension or modification of a health care facility, including its equipment, the inspection and supervision thereof; and the studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

"Department" means the New Jersey Department of Health.

"Equity" means a voluntary non-operating asset contribution which will reduce the total size of the debt.

"Guidelines" means those general factors to be considered in applying a given standard, or to guide decision-making in areas for which specific standards are not available or would not be appropriate.

"Health Systems Agency" means an officially recognized health systems agency formed under the provision of Federal Law 93-641, as amended and supplemented.

"Modernization" means the alteration, expansion, major repair (to the extent permitted by regulations), remodeling, replacement, and renovation of existing buildings (including initial equipment thereof), and the replacement of obsolete equipment of existing buildings.

"Proposed Capital Expenditure" means the sum total of expenditures anticipated by the facility at the conclusion of a project, which includes expenditures by a facility acting as its own contractor, which under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance.

"Relative Length of Stay Index" means the analysis published by the Department which compares the Average Length of Stay for an individual hospital within the hospital's peer group controlling for casemix. The methodology for the Relative Length of Stay Index is contained in the official New Jersey State Health Plan, as amended, and shall be based

on the most recent data collected by the Department.

"Standards" means the specific requirements that applicants must satisfy in developing applications for Certificate of Need approval. To the extent practicable, standards shall address measurable characteristics that such applications must meet.

8:43G-1.5 Standards regarding addition of beds

(a) No acute care bed additions to hospitals shall be approved under these rules.

(b) Hospitals proposing to convert beds to new or alternate services shall demonstrate need for those services in their area under methodologies or criteria contained in the Hospital Policy Manual (N.J.A.C. 8:43E), the State Health Plan, and other applicable approved planning regulations of the Department.

(c) Where the applicant is proposing beds to support specialized services for which there are no methodologies referenced in the documents cited at N.J.A.C. 8:43E-1.10(a), the need for beds shall be documented by an analysis of scientific and medical data which demonstrates that beds for a new service are cost effective, beneficial to patients, accessible, of high quality, and could not be provided in a less costly setting. In addition, an applicant shall provide information demonstrating the need for beds by documenting estimates of:

1. Referrals from major referral sources, as reflected in letters of support, and
2. Projected admissions and average length of stay (the bases for these projections must be specifically identified in the application), and
3. Utilization based upon methodologies established by federal, regional, or other health planning or financing authorities, and
4. Occupancy level projections which shall be demonstrated to have achieved a minimum of 75 percent (for the beds proposed in the application) within the initial two years of full operation.

8:43G-1.6 Standards regarding occupancy rates

(a) For purposes of review of Certificate of Need applications, the minimum occupancy rate based upon licensed beds for an acute general hospital shall be 75 percent at the conclusion of projects, except as noted in (c) below.

(b) The level of excess beds within a hospital shall be that number of licensed beds, which, when deleted from the license, will allow a hospital to achieve a 75 percent minimum occupancy level for a period three years beyond the projected completion date of the project, defined as the "target year". Utilization levels for the target year shall be based on utilization trends for the most recent 24 months for which data is available to the Department, applied forward to the target year from the most recent quarter of available data.

(c) Projects proposing modernization of existing beds through replacement by new construction shall demonstrate minimum target year occupancy of 80 percent in the new beds unless it is documented that new construction is a more cost effective alternative. This exception shall be applied to all criteria contained in N.J.A.C. 8:43G-1.7.

8:43G-1.7 Community need standards

(a) A hospital may be approved for necessary capital renovation funds when it demonstrates that it meets the following standards:

1. Utilization standards:
 - i. Overall occupancy rates of greater than 75 percent at the conclusion of the project.
 - ii. Trends in volume (admissions ALOS and/or patient days) which indicate occupancy will continue to be above 75 percent of total remaining licensed beds for a period of at least three years beyond completion of the project. Same Day Surgery volume shall be taken into consideration in this calculation.
2. Efficient size: A hospital shall maintain at least 200 beds while maintaining an overall occupancy rate of at least 75 percent. Where it fails to meet this standard, capital projects may only be approved where the hospital is geographically isolated, efficiently operated, or merged into a multi-hospital system in its area.
3. Excess bed areas: Where the number of excess beds as determined under N.J.A.C. 8:43G-1.6(b) in an area (as defined by the Department in consultation with Health Systems Agency), exceeds 75 percent of licensed bed capacity of an applicant hospital, no approval be granted except where multi-hospital arrangements, including mergers or joint applications resulting in consolidation of services and substantial reductions in excess capacity, are proposed within the project. Exceptions may be considered if the applicant meets criteria outlined in 2. above.
4. Hospital efficiency: The applicant must demonstrate that it is operated in an economically efficient manner through generally accepted industry efficiency standards and through its ranking on the Relative

Length of Stay Index. Exceptions may be considered if the applicant meets criteria outlined in 2. above.

5. The following criteria will be utilized in determining exceptions to (a)2-4 above.

i. A hospital is geographically isolated, where there is lack of another acute care hospital within a 15 mile radius of an applicant hospital, where at least 50 percent of the residents of the service area utilize the hospital, or

ii. A hospital is efficient, where its occupancy rates are above 80 percent overall for the last four quarters reported to the Department and where the hospital's ranking is below 1 standard deviation of the mean for its peer group on the Relative Length of Stay Index (a low length of stay within its peer group adjusted for case mix).

iii. A multi-hospital system application may be proposed in two forms:

(1) Joint community application: An application submitted jointly by all hospitals (or a combination of hospitals constituting a majority of needed beds) within a 15 mile radius of the applicant hospital or in a health-service area as defined by HSAs and approved by the Department, that accomplishes the following objectives:

(A) Consolidation and regionalization of services in the area, accomplishing the reduction of duplicative inpatient, outpatient, therapeutic and diagnostic services and of ancillary and administrative functions between institutions; and,

(B) Creation of specific operational cost savings which will be incorporated into the rates upon completion of the project; and

(C) Establishment of a joint planning committee for the area which includes all hospitals identified in the application, as well as community and HSA participants.

(2) Hospital merger applications: An application for transfer of ownership between two or more institutions within a 15 mile radius or in a health-service area as defined by HSAs and approved by the Department in which all assets are merged under a single corporate entity operated by a single board of trustees, which accomplishes the following objectives:

(A) Reduction of all excess beds within the merged institutions and conversion, closure, or consolidation of unnecessary physical plant areas in a manner achieving cost savings to the system; and

(B) Consolidation of duplicative inpatient, outpatient, therapeutic and diagnostic services and ancillary and administrative functions where appropriate to the overall health care needs of the health service area.

(C) Compliance with standards identified at N.J.A.C. 8:43G-1.10.

(b) Planning of alternatives available to hospitals not meeting the criteria for community need identified in (a)1 above include application for capital planning funds as a one time rate adjustment under N.J.A.C. 8:83 (Hospital Reimbursement regulations) for the following:

1. Conversion of acute-care beds study: Hospitals have a variety of options in converting all or a portion of their acute care bed components to non-acute care purposes. The study of conversion of acute-care beds would determine the capital and operating costs associated with each option, and assess reimbursement applications.

2. Closure study: The closure study must address the impact on medically underserved populations, the ambulatory-care needs of the community, an employee retraining or job relocation plan, and a financial analysis of both short-term and long-term debt. To be eligible for a closure study, the hospital must not be in default or in bankruptcy.

(c) An exception to N.J.A.C. 8:43G-1.7 may be considered by the Commissioner where the project scope is limited to correction of conditions constituting an imminent hazard to the health and safety of patients and staff as determined by the Department.

8:43G-1.8 Guidelines for reviewing project component need

In addition to demonstrating continued community need, all hospitals must demonstrate the need for each component part of the proposed project. A component shall mean any element of the overall project that is associated with the modernization or renovation, expansion, or new construction of an identifiable physical plant area, such as a nursing unit, ancillary department, administrative area, or any structural element of the facility. Priority will be given to the approval of components proposing to address modernization/renovation or construction of physical plant areas for needed services and departments where capital expenditures are necessary for correcting functional or structural obsolescence, life safety code requirements (N.F.P.A. 101), or to achieve demonstrable and proportionate improvements in patient care as determined by the Department. Where a component is the subject of an approved planning regulation, that component must satisfy all applicable criteria. Any components of a Certificate of Need project not demonstrated to be needed as determined by the Department may be denied.

8:43G-1.9 Standards regarding equity contributions and financing

(a) Financing of hospital construction, modernization/renovation, or major moveable equipment projects requires a minimum equity contribution from the hospital of at least 15 percent of total project costs, including all financing and carrying charges. This equity requirement may be reduced by one half of one percent for each full percentage point the hospital uncompensated care percentage exceeds the statewide average uncompensated care percentage for acute care hospitals.

(b) All projects involving long-term financing of capital construction costs shall demonstrate use of the least-cost financing reasonably available.

(c) Financing arrangements for construction, expansion, renovation, or purchase of facilities shall not entail debt obligations of greater duration than the expected useful life of the assets financed.

(d) It shall be a condition of any approved Certificate of Need that capital reimbursement shall be predicated upon the higher of actual volume or volumes projected in the approved application.

(e) All applicants must demonstrate the financial feasibility of their projects. An appropriate financial feasibility study must be submitted at the time of application which must test the feasibility of the project under various assumptions regarding both capital and non-capital reimbursement policies that are currently under consideration at both the federal and state levels. These assumptions will be identified by the Department prior to the time of application.

(f) Capital costs approved through Certificate of Need applications under these rules will not be guaranteed future reimbursement.

8:43G-1.10 Standards regarding accessibility

The applicant must demonstrate compliance with all accessibility criteria as identified in N.J.A.C. 8:33-2.1, "Certificate of Need Application and Review Process."

8:43F-1.11 Multi-hospital arrangements

(a) Hospitals which propose the merger, acquisition, or joint establishment of corporate structures with any other licensed hospital(s) for the purpose of providing a health care service, or where a change in ownership Certificate of Need application is filed by a licensed hospital, it shall demonstrate in the Certificate of Need that:

1. Cost efficiencies will be effected and will result in significant and proportionate long term net operational savings to the participating hospitals and to the health care system as a whole; and

2. Where the project is related to inpatient services, a substantial reduction of excess bed capacity, as determined under N.J.A.C. 8:43G-1.6, will result for participating hospitals through decertification or conversion of acute care beds; and

3. Duplication of services will be eliminated where appropriate through the proposed merger, acquisition of corporate restructuring.

8:43G-1.12 Pediatric intensive care/critical care units

(a) Pediatric Intensive Care beds shall be provided on a regionalized basis. No facility shall offer such services without Certificate of Need approval. No Certificate of Need shall be awarded unless need is demonstrated through casemix, delivery of tertiary care services, and establishment of cooperative arrangements with area hospitals.

(a)

DIVISION OF EPIDEMIOLOGY AND DISEASE CONTROL

Reportable Diseases

Reporting of Acquired Immunodeficiency Syndrome and AIDS Related Complex

Proposed New Rule: N.J.A.C. 8:57-1.14

Authorized By: Evelyn Geddes, Chairperson, Public Health Council.

Authority: N.J.S.A. 26:1A-7.

Proposal Number: PRN 1986-243.

A public hearing concerning this proposal will be held on Monday, July 14, 1986 at 9:30 A.M. at:

State Department of Health
Health-Agriculture Building
Commissioner's Conference Room, Room 805
John Fitch Plaza
Trenton, NJ 08625

Submit comments by July 16, 1986 to:
Ronald Altman, M.D.
Assistant Commissioner
New Jersey Department of Health
Division of Epidemiology and Disease Control
CN 360
Trenton, NJ 08625

The agency proposal follows:

Summary

The purpose of this proposed new rule is to make Acquired Immunodeficiency Syndrome (AIDS) and AIDS Related Complex (ARC) reportable diseases so that appropriate actions can be taken to protect the public health and to plan for the impact these diseases will have on the health care system.

AIDS data are currently being collected under the various associated infections and malignancies. The proposed new rule will unify data collection and will include the few associated opportunistic infections not now reportable. ARC data are not now being collected. This information will allow a better measure of the disease problem and will also allow studies on the natural history of this disease.

Because regulations dealing with communicable disease are enacted for the purpose of controlling transmission and because various communicable diseases are transmitted in widely differing manners, not all measures applied to control the transmission of communicable diseases are appropriate or necessary for all communicable diseases. Since AIDS/ARC and other types of HTLV-III infection are not airborne, or transmitted by casual contact or inanimate objects, it is not necessary to restrict nursing home or school admissions or to require disinfection of ambulances after use by an individual with HTLV-III infection in order to prevent transmission of the virus.

Social Impact

Accurate measurement of the problem will allow for better provision of services in the future to those infected by HTLV-III virus. It will also lay the ground work for control of transmission of this virus. Negative impact would result from a loss of the confidentiality of those individuals identified by the reporting system. Past experience with information on reportable diseases shows this to be a minimal risk.

Economic Impact

Reporting requires time and, as such, may be expected to increase costs to hospitals and other reporting agencies. Nearly all cases of AIDS are now being reported under other diagnoses, as previously described, so the increase in cost will arise as a result of reporting ARC cases. It is difficult to predict how many ARC cases will be reported, and therefore what the cost will be, but experience in other jurisdictions show fewer ARC cases than AIDS cases reported.

As data are collected, planning for health care services and facilities will be improved which will result in a reduction of costs to the health care system and possibly to health care providers as well. Thus, the expected short term economic impact is a small increase in cost but the long term expected effect would be a decrease in costs.

Full text of the proposed new rule follows:

8:57-1.14 Reporting of Acquired Immunodeficiency Syndrome and AIDS related complex

(a) "Acquired Immunodeficiency Syndrome," hereafter referred to as AIDS, means a condition affecting a person who has a reliably diagnosed disease that is at least moderately indicative of any underlying cellular immunodeficiency in the absence of an identifiable cause of cellular immunodeficiency or of increased susceptibility to that disease (including but not limited to Pneumocystis carinii pneumonia, Kaposi's sarcoma, etc.) or any currently scientifically determined definition, as accepted by the State Commissioner of Health.

(b) AIDS-Related Complex, hereafter referred to as ARC, means a condition affecting a person who has at least two of the following clinical signs or symptoms lasting three or more months, plus two or more of the following laboratory abnormalities, plus a positive test for HTLV-III antibody or any other test which measures infection by HTLV-III virus, or any currently scientifically determined definition as accepted by the State Commissioner of Health.

- I. Clinical signs or symptoms:
 - i. Fever: 100°F, intermittent or continuous, for at least three months, in the absence of other identifiable cause.
 - ii. Weight Loss: 10 percent normal body weight or 15 pounds.
 - iii. Lymphadenopathy: persistent over at least three months, involving two extra-inguinal node-bearing areas.

- iv. Diarrhea: intermittent or continuous, for three months, in the absence of other identifiable cause.
 - v. Fatigue: to the point of decreased physical or mental function.
 - vi. Night Sweats: intermittent or continuous, for three months, in the absence of other identifiable cause.
2. Laboratory abnormalities:
 - i. Depressed helper T-cells (two standard deviations below the mean).
 - ii. Depressed helper/suppressor ratio (two standard deviations below the mean).
 - iii. At least one of the following: leukopenia, thrombocytopenia, absolute lymphopenia or anemia.
 - iv. Elevated serum globulins.
 - v. Depressed blastogenesis (Pokeweed, phytohemagglutinin (PHA) mitogens).
 - vi. Abnormal intradermal tests for delayed cutaneous hypersensitivity (using Multi-Test or equivalent).
- (c) The procedures below shall be followed when reporting AIDS or ARC:

1. Every physician attending any person ill with AIDS or ARC shall, within twelve hours after such disease has been diagnosed, report in writing such disease directly to the State Department of Health. The report shall include the name of the reporting physician, the name of the disease, the name, age, sex, the home address and telephone number of this person, the date of onset of illness, and such other information as may be requested by the State Department of Health.

2. The superintendent or other person having control or supervision over any institution, such as a hospital, sanitarium, nursing home, or penal institution in which any person is ill with AIDS or ARC shall, within twenty-four hours after such disease has been diagnosed, report such disease directly to the State Department of Health. The reports shall state the name of the disease, the name, age, sex the home address of such person, or the address from which he was received into the institution, the date upon which he was received for care or treatment, the name of the attending physician, and such other information as may be required by the State Department of Health. The superintendent may delegate this report activity to a member of the staff, but this delegation does not relieve the superintendent of the ultimate reporting responsibility.

(d) AIDS/ARC or any other type of HTLV-III infection shall not be considered a communicable disease for purposes of admission to, attendance in, or transportation in any of the follow:

1. Nursing homes and other health care facilities;
2. Rooming and boarding homes, and shelter for the homeless; and
3. Educational facilities.

(d) Laboratory tests demonstrating the presence of HTLV-III antibody shall not be considered evidence, in and of themselves, of AIDS or ARC.

HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

(a)

Vision Care Manual Professional Services, Optical Appliances, Billing Procedures

Proposed Repeal: N.J.A.C. 10:62-1, 2, 3
Proposed New Rule: N.J.A.C. 10:62-1, 2, 3

Authorized By: Geoffrey S. Perselay, Acting Commissioner,
Department of Human Services.

Authority: N.J.S.A. 30:4D-6a(5)b(6)(7), 7, 7a, b, c.

Proposal Number: PRN 1986-230.

Submit comments by July 16, 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

For purposes of this summary, the term "Medicaid" shall refer to the New Jersey Medicaid Program; the term "Division" shall refer to the Division of Medical Assistance and Health Services.

The Division is proposing to repeal the existing text of the Vision Care Manual, N.J.A.C. 10:62-1, 2 and 3, and replace it with new rules. Providers of vision care services include ophthalmologists, optometrists, and opticians, who can provide services to Medicaid patients within the scope of their license. Covered services include screening examinations, comprehensive eye examinations, office visits, subnormal vision examination, and vision training. Some of these services require prior authorization from the Division's Vision Care Unit.

Subchapter 2 defines and describes the optical appliances that are covered by Medicaid. The appliances include optical lenses and frames, artificial eyes, and subnormal vision devices. Certain optical appliances require prior authorization. This subchapter also contains standards for lenses, frames, and record keeping policies.

Subchapter 3 describes the billing procedures that must be followed when submitting a claim in order to obtain reimbursement from Medicaid. The provider must use the Health Insurance Claim Form (1500 N.J.) for professional services. The provider must use the form MC-9A-C3 (10/84 edition) when submitting a claim for any optical appliance. This form (MC-9A-C3) is also used for prior authorization. All claims must be received by the Prudential Insurance Company, acting as fiscal agent for the Division, within 90 days from the date of service. Subchapter 3 also describes the Division's policy governing group practice, combination Medicare/Medicaid claims, and instructions for completing the form 1500-N.J.

Social Impact

The proposed new rules apply to all Medicaid patients who are in need of eye care and optical appliances. The rule also applies to all providers of vision care services, who need to be aware of Medicaid policies when treating a Medicaid patient.

Economic Impact

The Division spent approximately 5 million dollars (federal-state share combined) on vision care services in State Fiscal Year 1984, and approximately 4.6 million dollars (federal-state share combined) in State Fiscal Year 1985.

There is no cost to the Medicaid patient for services covered under the New Jersey Medicaid Program.

The economic impact on providers varies, depending on the number of Medicaid patients being treated. The fee schedule for vision care providers can be found at N.J.A.C. 10:62-4.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:62-1, 2 and 3.

Full text of the proposed new rules follows.

SUBCHAPTER 1. EYE CARE: PROFESSIONAL SERVICES

10:62-1.1 Scope of vision care professional services

This subchapter is concerned with examinations and care for vision defects and/or eye diseases.

10:62-1.2 Definitions

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

"Consultation" means advice or counsel of a qualified specialist, as recognized by New Jersey Medicaid program, which is requested by the attending physician. The consultation requires a personal examination of the patient with a written report of the history, physical findings, diagnosis and recommendations of the consultant.

"Optometrist" means any person who is licensed by the New Jersey State Board of Optometry to engage in the practice of optometry, or similarly licensed by a comparable agency of the state in which he performs such functions.

"Specialist" means a fully licensed physician who:

1. Is a diplomate of the appropriate American Board, or Osteopathic Board; or
2. Is a fellow of the appropriate American Specialty College or a member of an Osteopathic Specialty College; or
3. Has been notified of admissibility to examination by the appropriate American Board or Osteopathic Board, or has evidence of completion of an appropriate qualifying residency approved by the American Medical Association or American Osteopathic Association; or
4. Holds an active staff appointment with specialty privileges in a voluntary or governmental hospital which is approved for training in the specialty in which the physician has privileges; or
5. Is recognized in the community as a specialist by his peers.

"Transfer" means the relinquishing of responsibility for the continuing

care of the patient by one physician and the assumption of such responsibility by another physician.

10:62-1.3 Providers of services

(a) Within the restrictions of their respective licensure, the following are eligible providers of eye care:

1. Ophthalmologists and optometrists licensed in the state of New Jersey;
2. An ophthalmologist or optometrist in another state who is duly licensed in that state;
3. Independent outpatient health care facilities approved by the New Jersey Medicaid Program to render eye care services;
4. Hospitals meeting the definition of "approved hospital" as described in N.J.A.C. 10:52-1.1.

10:62-1.4 Covered services

(a) Professional services include screening examination, comprehensive eye examination, office visit, out-of-office visit, subnormal vision examination, subnormal vision work-up and vision training. Payment is made subject to the limitations specified under each type of service. If a service requires prior authorization, see N.J.A.C. 10:62-1.5.

1. A screening examination shall consist of procedures performed to determine whether a comprehensive examination is necessary. As a minimum, the screening examination shall consist of the following:

- i. External examination;
- ii. Visual acuity in each eye;
- iii. Gross muscle balance.
- iv. It is the intent of the program to reimburse the ophthalmologist or optometrist for either a screening examination or a comprehensive eye examination rendered to a patient, but not both. If, as a result of the screening examination, it is felt that a comprehensive examination is necessary, it shall be completed at that time or at the earliest mutual convenience of the provider and patient. The screening examination, in this instance, becomes an integral part of the comprehensive examination and the claim submitted to the program should be for a comprehensive eye examination. If, however, the screening examination reveals that no further examination is necessary, a claim shall be submitted for visual screening examination.

2. A comprehensive eye examination shall include, as a minimum, with or without cycloplegics and with or without a post cycloplegic visit, the following which also includes recording of negatives:

- i. Detailed case history;
- ii. Complete visual acuity findings;
- iii. External and internal (ophthalmoscopic) examination including slit lamp;
- iv. Refraction (objective and subjective);
- v. Extra-ocular measurement (EOM);
- vi. Gross visual fields (central and peripheral);
- vii. Tonometry (when indicated, for patients under 35; mandatory for all patients over 35). The specific method used should be identified and recorded (the finger palpation test is not acceptable);
- viii. Binocular coordination testing (distance and near); Fusion, stereopsis, and color vision;
- ix. The diagnosis (ocular deficiency or deformity, visual or muscular anomaly, and so forth);
- x. Recommendations.

3. An office visit consists of care and treatment by the physician or other practitioner and includes those procedures ordinarily performed during an office visit, dependent upon the physician's or other practitioner's discipline. The following shall be included as a minimum in the progress notes:

- i. Purpose of visit;
- ii. Pertinent history obtained;
- iii. Pertinent physical findings including pertinent negative physical findings based on i. and ii. above;
- iv. Procedures (The provider's office record shall clearly document performance of all elements of procedure code billed);
- v. Lab, x-ray and ECG, etc. ordered, with results;
- vi. Diagnosis(es) plus treatment plan status, including drugs or other items ordered, relative to present and pre-existing illness plus pertinent recommendations and actions.

4. A subnormal vision examination may be performed when the condition is detected. For purposes of the New Jersey Medicaid Program, subnormal vision is defined as that condition where vision in the better eye is 20/70 or less with the best correction. A subnormal vision examination may be done following a comprehensive eye examination.

5. Subnormal vision work-up (prior authorization required) shall be documented.

6. Vision training (prior authorization required):

i. For purposes of the New Jersey Medicaid Program, vision training is the use of certain procedures and modalities for the development of and/or increase in the vision capacity of the eye(s) with poor and/or inconsistent or distorted vision localization.

ii. Vision training is limited to orthoptics with its acceptable procedures and/or modalities and further limited to the following types of conditions to be treated by private practitioners approved for such training by the respective peer group:

- (1) Strabismus;
- (2) Amblyopia;
- (3) Heterophoria;
- (4) Accommodative/convergence anomalies.

iii. If vision training is required following the initial comprehensive eye examination, the practitioner shall submit a written request to Vision Care Unit for prior authorization for a vision training work-up. This request shall include the preliminary findings, detailed reason(s) why it is believed a further evaluation is needed, and any history of previous vision training with the dates and the results. Upon receiving approval for a vision training work-up, the practitioner shall then submit, within 30 days of receipt of authorization, the work-up report to the Vision Care Unit. The vision training work-up report shall consist of, but not be limited to:

- (1) Diagnosis;
- (2) Findings;
- (3) Interpretation;
- (4) Recommendations;
- (5) Outline of training procedures and frequency of sessions with estimated duration of treatment;
- (6) Prognosis;

iv. Upon completion of an approved training program, the practitioner shall submit a detailed progress report, listing the status of all parameters indicated in the original evaluation. No treatment plan shall exceed a period of 90 days or a total of 30 training visits, commencing with the inception of the treatment plan. Prior authorization is required for any extension of treatment and requires submission of a detailed progress report as noted previously.

v. Vision training may be provided by the private practitioner. Vision training may also be provided, when a professional multi-disciplinary evaluating team indicates this need, in a licensed or certified health care facility or a "special clinic" approved by the New Jersey Medicaid Program.

vi. The following is a list of currently approved clinics for vision training:

- (1) United Hospitals Medical Center, Newark Eye and Ear Unit, 15 South 9th Street, Newark, New Jersey 07107;
- (2) Middlesex General—University Hospital, 180 Somerset Street, New Brunswick, New Jersey 08901;
- (3) Helene Fuld Medical Center, 750 Brunswick Avenue, Trenton, New Jersey 08638;
- (4) Atlantic City Medical Center, 1925 Pacific Avenue, Atlantic City, New Jersey 08401.

10:62-1.5 Professional services requiring prior authorization

(a) Prior authorization must be requested in writing from the Vision Care Unit, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625, for the services listed under (c) below.

(b) The written request shall be made before the service is provided and should include proper recipient identification, the diagnosis and detailed reasons why such services are being requested.

- (c) The following professional services require prior authorization:
1. Vision training work-up;
 2. Vision training;
 3. Out-of-office visits, except nursing homes and emergencies;
 4. Subnormal vision work-up;
 5. All other services not specified as a covered service under N.J.A.C. 10:62-1.4.

10:62-1.6 Prescription policy

(a) A patient is entitled to have a copy of his or her prescription for eyeglasses. To prevent possible recipient overutilization, the following information shall be indicated on the prescription: Name, address, HSP (Health Services Program—Medicaid case number), date of examination.

(b) If a patient requests a duplicate prescription from a non-dispensing provider (Ophthalmologist or Optometrist), the duplicate prescription shall clearly indicate: "This is a duplicate of the original prescription". (The date of the original prescription shall also be included.)

(c) The dispensing provider (Ophthalmologist or Optometrist or Optician) shall retain the original prescription. If a duplicate is requested by the patient, specify that it is a duplicate of a prescription, indicating date that the glasses were dispensed.

10:62-1.7 Record keeping policies

(a) Providers shall keep such legible individual records as are necessary to fully disclose the kind and extent of services provided, as well as the medical necessity for those services. Data includes such the quantitative positive and negative findings as be meaningful in subsequent review. Check marks are not acceptable. The information shall be readily available to representatives of the New Jersey Medicaid Program or its agents as required.

(b) Records shall be kept and maintained by the provider for a period of at least 5 years from the date the service was rendered.

10:62-1.8 Basis of payment

(a) The provider shall use his or her usual and customary charge when submitting a claim. Reimbursement for covered services furnished under the New Jersey Medicaid Program shall be made on the basis of the customary charge, not to exceed an allowance determined reasonable by the Commissioner of Human Services, and further limited by federal policy relative to payment of practitioners and other individual providers.

1. In no event shall the charge to the New Jersey Medicaid Program exceed the charge by the provider for identical services to other governmental agencies, private nonprofit agencies, trade unions or other individuals in the community.

2. If a patient receives care from more than one member of a partnership or corporation in the same discipline, the maximum payment allowance shall be the same as that of a single provider. For purposes of reimbursement, optometrist and/or physician, optometrist and physician groups, shared health care facility, or optometrist and physician sharing a common record shall be considered a single provider.

3. Reimbursement shall not be made for, and recipients may not be asked to pay for, broken appointments.

(b) For reimbursement purposes, when the optometrist or physician submits a claim for the following services, the services shall have been performed personally by the optometrist or physician submitting the claim.

1. Office visit,
2. Hospital visit,
3. Long-term care facility visit or residential health care facility visit; and
4. Any and all parts of the history or eye examination.

(c) To qualify as documentation that the service was rendered by the physician or optometrist during an inpatient stay, the medical record must contain the optometrist's or physician's notes indicating that he or she personally:

1. Reviewed the patient's medical history with the patient and/or his family, depending upon the medical situation;
2. Performed an eye examination;
3. Confirmed or revised the diagnosis;
4. Visited and examined that patient on the days for which a claim for reimbursement is made;

(d) The billing physician's or optometrist's involvement must be clearly demonstrated on notes reflecting his or her personal involvement with the service rendered. This refers to those occasions when these notes are written into the medical record by interns, residents, other house staff members, or nurses. A countersignature alone is not sufficient.

(e) The New Jersey Medicaid Program utilizes the Health Care Financing Administration's (HCFA) Common Procedure Coding System (HCPCS). (See Subchapter 4 of this manual for details.)

1. Dates of service for each procedure code submitted for reimbursement must be indicated on the claim form and the practitioner's own office record.

SUBCHAPTER 2. OPTICAL APPLIANCES AND SERVICES

10:62-2.1 Scope of optical appliances and services

This subchapter is concerned with the optical appliances necessary for the correction of any eye vision defects.

10:62-2.2 Definitions

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

"Optical appliances" means those items, devices or appliances prescribed by an eligible provider and furnished by an eligible provider in order to aid or improve vision, or to replace the eye.

"Optician" means an individual licensed by the State Board of examiners of ophthalmic dispensers and ophthalmic technicians.

"Providers of optical appliances" means those providers who possess respective New Jersey licensure for supplying optical appliances to the public, and are approved by the N.J. Medicaid Program.

10:62-2.3 Providers of services

(a) Within the restrictions of their respective licensure, the following are the only providers eligible to participate in the vision care program:

1. Physicians recognized as specialists in ophthalmology by the New Jersey Medicaid Program in accordance with the Physician Services Manual or the Vision Care Services Manual;
2. Persons licensed by the State of New Jersey to practice optometry;
3. Persons licensed by the State of New Jersey as ophthalmic dispenser;
4. Independent outpatient health care facilities approved by the New Jersey Medicaid Program to render eye care services, and;
5. Hospitals approved for New Jersey Medicaid Program participation;

(b) Persons recognized as ocularists may be considered providers of artificial eyes upon recommendation of the prescribing practitioner and prior approval by the New Jersey Medicaid Program.

(c) An ophthalmologist, optometrist or optician in another state who is duly licensed or meets the requirements of his own state with regard to the dispensing of optical appliances.

10:62-2.4 Covered services

(a) The following optical appliances are covered under the New Jersey Medicaid Program:

1. Optical lenses (See N.J.A.C. 10:62-2.6);
2. Optical frames (See N.J.A.C. 10:62-2.7);
3. Repairs of optical appliances up to \$5.00;
4. Artificial eyes (Prior authorization required. See N.J.A.C. 10:62-2.5);
5. Subnormal vision devices (Prior authorization required. See N.J.A.C. 10:62-2.5);
6. Vision training devices (Prior authorization required. (See N.J.A.C. 10:62-2.5);
7. Replacement of optical appliances (Prior authorization required. See N.J.A.C. 10:62-2.5);
8. Dual pairs of glasses instead of multifocal (Prior authorization required. See N.J.A.C. 10:62-2.5);
9. Contact lenses (Prior authorization required. See N.J.A.C. 10:62-2.5);
10. Intraocular lenses.

10:62-2.5 Optical appliances requiring prior authorization

(a) Form MC-9 (Request for Authorization and Payment—Optical Appliances) shall be used for requesting prior authorization. The completed form, indicating clearly the reasons for requesting prior authorization, shall be submitted to the New Jersey Medicaid Program, Vision Care Unit, CN 712, Trenton, New Jersey 08625.

(b) Items requiring prior authorization should not be provided to the Medicaid patient until the authorization is received by the provider.

(c) The following optical appliances require prior authorization:

1. Contact lenses;
2. Artificial eyes;
3. Subnormal vision devices;
4. Vision training devices;
5. Repairs of optical appliances exceeding \$5.00;
6. Replacement of optical appliances;
 - i. The New Jersey Medicaid Program shall no longer pay for replacement of optical appliances which may have been lost, broken, damaged or stolen unless prior authorized.
 - ii. If prior authorization is approved due to extenuating circumstances, the replacement appliance shall be identical to the appliance being replaced.
7. Dual pairs of glasses instead of multifocal;
 - i. A statement indicating medical necessity shall be submitted when requesting two pairs of glasses in lieu of multifocal lenses.
8. When optical appliances are requested more than once every two years for persons 19 through 59 years of age or more frequently than once a year for persons less than 19 years or over 60 years.
 - i. To justify the request, all subsequent prescriptions shall have a change of at least 0.50 diopter in spherical or cylindrical power or a change in axis of five degrees or more;
9. Optical tints other than pink A and B;
10. Hilite lenses;
11. Special base curve;

12. All other optical appliance items not listed or requiring additional charges or not identified in N.J.A.C. 10:62-4.4 (HCPCS Codes for optical appliances).

10:62-2.6 Standards and policies regarding lenses

(a) Lenses shall be first quality ophthalmic lenses meeting the requirements as published by American National Standard Institute.

(b) Safety lenses shall meet impact resistant standards as set forth in United States Food and Drug Administration regulations.

(c) When the prescription for proper distance vision is different from the prescription necessary for normal near vision, bifocals and/or multifocal lenses are recommended. If two pairs of lenses are needed, see N.J.A.C. 10:62-2.5(c)7.

(d) For pricing purposes, all prescriptions shall be written in minus cylinder form.

(e) The total correction shall be at least 0.50 diopter in spherical or cylindrical power in the initial prescription for glasses.

(f) New lenses are reimbursable only if a change exists; that is, at least 0.50 diopter in spherical or cylinder power, or a change of five degrees or more in cylinder axis.

(g) Contact lenses (Prior authorization required as indicated in N.J.A.C. 10:62-2.5(c)1) may be approved only when recommended for:

1. Specific ocular pathological conditions (for example, Keratoconus, monocular surgical aphakia to effect binocular vision);
2. Patients whose vision cannot be improved to at least 20/70 with regular lenses but improvement of vision can be accomplished to 20/70 or better in the better eye.

(h) The policy for duplication or reproduction of the same correction is:

1. A re-examination and new prescription are required if more than one year (or two years in the case of an individual between 19 and 59 years of age) has elapsed since the date of the original prescription.
2. The provider must determine date and type of previous vision care service.

(i) The New Jersey Medicaid Program will not pay for replacement of optical appliances which may have been lost, broken, damaged or stolen unless prior authorized.

(j) Prior authorization is required for individuals with significant pathological conditions requiring optical tints other than pink A and B.

(k) The following lenses are not covered under the New Jersey Medicaid Program:

1. Gradient tint;
2. Oversize lenses;
3. Photo-gray lenses;
4. Photochromatic lenses;
5. Prescription sunglasses;
6. Rimless lenses;
7. Temporary glasses.

10:62-2.7 Standards and policies regarding frames

(a) Plastic, non-inflammable, American-made frames acceptable to the New Jersey Medicaid Program shall meet the following minimum criteria:

1. The manufacturer's name and size shall be properly identifiable on the frame;
2. The temples shall be wire-reinforced;
3. A hinge rivet shall pass through the reinforcing temple wire;
4. The material shall contain no scratches, fissures or bubbles;
5. There shall be no material discoloration at the time of dispensing;
6. The frame shall not be expanded beyond 1 mm. of the original size when the lenses are inserted.

(b) Replacement of a frame within two years is allowed only if the frame is lost, or broken and not repairable.

(c) Wire-metal frames are not covered under the New Jersey Medicaid Program.

10:62-2.8 Standards regarding guaranty/warranty

All rights, benefits, and services applicable to a private patient shall apply to the same extent to the Medicaid recipient.

10:62-2.9 Policies regarding artificial eye or prosthesis

Artificial eyes or prostheses, stock or custom-made, shall be of plastic material.

10:62-2.10 Approved fabricating laboratory

For purpose of the New Jersey Medicaid Program, an approved fabricating laboratory shall have the necessary equipment, licensed personnel and capability to completely surface and finish new optical glass or plastic lenses or from partially finished lenses. The laboratory shall be able to provide all services necessary to completely furnish eyeglasses as may be

requested by an optical dispenser and is subject to approval by the New Jersey Medicaid Program.

10:62-2.11 Record keeping policies

(a) Providers shall keep such legible individual records as are necessary to fully disclose the kind and extent of services provided, as well as the medical necessity for those services. Such information shall be readily available to the representatives of the New Jersey Medicaid Program or its agents as required.

(b) The records as required by (a) above shall include the following data:

1. Name of the recipient;
2. Address of the recipient;
3. HSP (Medicaid) Case number;
4. Original prescription;
5. Date of the prescription received;
6. Date of the dispensing to the recipient;
7. Records shall be kept and maintained by the provider for a period of at least 5 years from the date the service was rendered.

10:62-2.12 Basis of payment

(a) The reimbursement policy of the New Jersey Medicaid Program provides for payment to the provider of the actual invoice cost of the optical appliance. Providers are requested to indicate the actual invoice cost of the material when submitting a claim. Actual invoice cost is defined as the net amount paid by the provider, reflecting all discounts or special purchase agreements. The service (dispensing) fee, to which the provider is entitled, should be indicated as a separate item.

(b) Reimbursement for covered services and/or items shall be on the basis of the customary charge, not to exceed an allowance determined reasonable by the Commissioner of Human Services and further limited by Federal policy, where applicable, relative to payment of practitioners and other individual providers. In no event shall the charge to the New Jersey Medicaid Program exceed the charge by the provider for identical services and/or items to other governmental agencies, private nonprofit agencies, trade unions, or other individuals in the community.

(c) The maximum allowable reimbursement for frames is \$5.00. However, providers shall only bill the New Jersey Medicaid Program for the actual invoice cost of the frame when submitting a claim for payment. Actual invoice cost is defined as the net amount paid by provider, reflecting all discounts or special purchase agreements. Frames are reimbursable only if they meet the criteria listed in N.J.A.C. 10:62-2.7.

(d) Optical appliances are reimbursable under the New Jersey Medicaid Program only when prescribed by a provider of professional eye services as defined in N.J.A.C. 10:62-1.3, that is, physicians recognized by the program as ophthalmologists, optometrists, approved independent eye clinics and hospitals, and when dispensed by a provider of optical appliances as defined in N.J.A.C. 10:62-2.2.

(e) Non-physician services and equipment/supplies furnished to hospital inpatients by outside providers shall not be billed directly to the New Jersey Medicaid Program. Providers shall submit a bill/invoice to the hospital for payment.

SUBCHAPTER 3. BILLING PROCEDURES

10:62-3.1 General policy

(a) This subchapter contains information which informs New Jersey Medicaid Vision Care Providers when and how to request reimbursement. The two claim forms are:

1. The Health Insurance Claim Form (1500 N.J.) is used for the purpose of billing for professional services, that is, diagnostic examinations, medical and/or surgical care, by physicians and optometrists.

2. The Request for Authorization and Payment—Optical Appliances Form (MC-9) is used for the purpose of billing for optical appliances and also for requesting authorization.

i. If prior authorization is required, the MC-9 form is used when requesting authorization to furnish optical appliances and also to bill for such appliances following authorization.

ii. When prior authorization is not required, the MC-9 form is mailed directly to Prudential.

10:62-3.2 Timely submission of claims

(a) All Medicaid claims for payment of goods or services shall be received by the fiscal agent, the Prudential Insurance Company, no later than 90 days after the last date the goods or services were provided. In the event that the claim contains more than one date of service, the earliest reimbursable date of service must be within 12 months.

(b) In the case that two different dates encompassing two separate time spans occur involving optical appliances, the following shall apply:

1. From the prescribing date to the date of receipt of the prescription by the dispenser, that is, ophthalmologist or optometrist to the optician or vendor, claims for optical appliances not requiring prior authorization will be paid only when the date of receipt by the dispenser (vendor or optician) is not more than 90 days following the prescribing date.

2. Claims for optical appliances not requiring prior authorization shall be paid only when the date of receipt of the finished appliance by the eligible recipient is not more than 30 days following the date of receipt of the prescription by the dispenser.

i. If it is not possible to dispense an optical appliance within the stated time, the provider shall notify the Vision Care Unit, stating that such time limit cannot be met in a particular case, with the reason(s) why.

(c) Payment by the New Jersey Medicaid Program shall be made for covered services provided to eligible recipients only. It is the responsibility of the provider to verify recipient eligibility prior to providing any service on every visit, including the visit to dispense the glasses. If the patient is ineligible for benefits at the time of the dispensing of the optical appliances, the provider should collect the fee from the patient. If the provider can demonstrate that he was unable to collect the fee from the patient, or if other circumstances (that is death, moving out-of-state and so forth) prevail, the provider may submit a full report to the Vision Care Unit requesting consideration for cost of materials only.

10:62-3.3 Patient identification

(a) Verify that the patient is a covered person on the first visit and each visit thereafter. This is done by viewing the patient's validation of eligibility form (See N.J.A.C. 10:49-1.2 Administration).

(b) A patient's Validation Form shall be reviewed on each visit when extended plans of treatment have been authorized.

(c) Prior authorization is no guarantee that an individual is covered by the N.J. Medicaid Program. The Vision Care Unit does not verify patient eligibility when authorizing a prescription.

(d) Authorization becomes invalid upon termination of eligibility for the N.J. Medicaid Program.

10:62-3.4 Group practice

(a) For purposes of billing under the New Jersey Medicaid Program, providers who are in group practice or partnership shall list themselves under one name and one provider number.

(b) The instructions in Sections 3.7 and 3.8, where applicable, also apply to group practice. The individual practitioner or provider rendering each service or item shall complete and sign the provider certification portion of the form. (Health Insurance Claim Form (1500 N.J.), Section 25. Request for Authorization and Payment—Optical Appliance Claim Form (MC-9), Section 23.

10:62-3.5 Prior authorization

Items or services requiring prior authorization shall not be provided until the authorization is received from the Vision Care Unit. (See N.J.A.C. 10:62-1.5 or 10:62-2.5).

10:62-3.6 Combination Medicare/Medicaid claims

(a) Cataract lenses and/or artificial eyes are eligible for payment under supplemental medical insurance benefits (Medicare, Part B). When these specific services are rendered to or for a New Jersey Medicaid eligible patient who is also eligible for Medicare, the Health Insurance Claim Form (1500-N.J.) shall be submitted directly to the Medicare carrier:

The Prudential Insurance Company
Medicare B Division
Post Office Box 2222
Linwood, New Jersey 08221
Telephone 1-800-462-9306

(b) The provider shall record both the Health Insurance Claim (Medicare) number in item 6 and the HSP (Medicaid) case number in item 8 of the Form 1500-N.J.

1. No prior authorization by the New Jersey Medicaid Program is required for Medicare covered services. However, the responsibility for reimbursement by the New Jersey Medicaid Program is limited to the payment of the unsatisfied deductible. Coinsurance shall be considered for Vision Care appliances only.

10:62-3.7 Form 1500-N.J. shall be completed exactly as indicated in Exhibit I.

10:62-3.8 Form MC-9 shall be completed exactly as indicated in Exhibit II.

10:62-3.9 Mailing instructions

(a) For items or services requiring prior authorization, the 1500 N.J. or the MC-9 Claim Form shall be mailed to:

Division of Medical Assistance
and Health Services
Vision Care Unit
CN 712
Trenton, New Jersey 08625
Telephone (609) 588-2739 or
(609) 588-2732

(b) For items or services not requiring prior authorization, or for which prior authorization has been received, the fabricating laboratory invoice along with the authorization approval, if required, shall be attached to the fiscal agent's copy of the claim form and mailed to:

The Prudential Insurance Co. of America
P.O. Box 1900
Millville, New Jersey 08332
Telephone 800-582-7052

(c) The other copies of the MC-9 claim form shall be maintained in the provider's record.

(d) Invoices will be accepted only from New Jersey Medicaid Program approved wholesale fabricating laboratories. See N.J.A.C. 10:62-2.10.

EXHIBIT I

ITEM 1. Copy the patient's name EXACTLY as it appears on the validation of eligibility form.

ITEM 2. Indicate patient's date of birth. Use six (6) digits (e.g., Sept. 10, 1980 is written 09/10/80). If only the year is known, enter the year. If actual birthdate is unavailable, enter the patient's age.

ITEM 3. Not applicable to Medicaid.

ITEM 4. Indicate patient's address and telephone number.

ITEM 5. Check appropriate block to identify patient's sex.

ITEM 6. Copy the patient's Health Insurance Claim number as it appears on the Medicare Health Insurance Card when the patient is covered by both Medicare and Medicaid.

ITEM 7. Not applicable to Medicaid.

ITEM 8. Copy the patient's New Jersey Medicaid Program HSP (Medicaid) Case number and Person number EXACTLY as it appears on the validation of eligibility form.

ITEM 8a. Not applicable to Medicaid.

ITEM 9. Check appropriate block to indicate whether the patient has other Health Insurance Coverage. If yes, you must attach a copy of the decline notice or a copy of the explanation of payment.

ITEM 10. Check as appropriate.

If patient's illness or injury is work related.

If patient's injury resulted from an automobile accident or other.

ITEM 11. Not applicable to Medicaid.

ITEM 12. Under ordinary circumstances, the patient must sign and date the claim form when services have been received.

The claim form must indicate all services rendered prior to presenting it to the patient for signature.

If the patient's signature is unobtainable, (See Chapter 49 of this manual, Administration—10:49-1.26).

ITEMS 13-18. Not applicable to Medicaid.

ITEM 19. If patient was referred to you, indicate the name of the referring practitioner. If patient is enrolled in the Medicaid Personal Physician Plan indicate name of the Physician Case Manager.

ITEM 19a. Enter the Individual Medicaid Practitioner (IMP) number of the referring physician/practitioner for whom you indicated in Item 19.

If patient is enrolled in the Medicaid Personal Physician Plan. Keep authorization form signed by Physician Case Manager in your file.

ITEM 20. Not applicable to Medicaid.

ITEM 21. Write in the name of the institution if place of service is other than doctor's office or patient's home.

To be completed in addition to Item 24b.

ITEM 21a. Not applicable to Medicaid.

ITEM 22. Check "No" block when laboratory work was analyzed by you. Do not bill Program if laboratory work was analyzed outside your office.

ITEM 23a. Enter diagnosis. You may use the codes listed in the International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM) Code Numbers book for all services identified in Item 24d. (Do not confuse the diagnosis with the patient's complaint or symptoms.)

ITEM 23b. Early Periodic Screening Diagnosis and Testing Program Referral:

Complete this item for recipients under 21 years of age. Ask the patient

and/or referring physician or clinic if this visit is a result of an EPSDT screening. Indicate if this patient is such a referral by checking the appropriate block.

ITEM 24a. Enter date(s) of each visit.

ITEM 24b. Identify place of service by selecting appropriate alpha code as listed on the reverse side of form under "Place of Service" Codes.

ITEM 24c. Identify type of service by selecting appropriate numeric code as listed on the reverse side of form under Type of Service Codes.

ITEM 24d. Physicians, Optometrists:

Identify the procedure by code number as listed in Subchapter 4 and insert procedure code under 24D. Providers no longer need to include a narrative description of the procedure code.

However providers may also elect to include the narrative description as well as the code under the following circumstances:

1. The service is more clearly defined by the inclusion of both code and narratives;

2. The provider is unable to locate a code relevant to the service rendered.

ITEM 24e. Enter reference numbers in (23a) related to applicable diagnosis for that visit.

ITEM 24f. Not applicable to type of billing.

ITEM 24g. Enter your usual and customary charge for each service or procedure.

ITEM 24h. Not applicable to type of billing.

ITEM 24i. Leave Blank.

ITEM 25. Carefully read the Medicaid Provider Certification on the reverse side of the form.

The Individual Practitioner who personally performed or supervised the service(s) represented on the claim must put his/her signature on each claim before submitting for payment.

If a claim covers services performed by more than one practitioner, the group member who performed the last procedure should sign the claim.

ITEM 26. Not applicable to Medicaid.

ITEM 27. Enter the sum total of the individual charges.

ITEMS 28-29. Not applicable to Medicaid.

If item 9 is answered yes, the attachment (copy) of the other insurance decline notice or explanation of payment will be sufficient.

ITEM 30. The IMP number of the physician/practitioner who signed the form must be provided, if the services were performed by more than one group member.

ITEM 31. If not preprinted, write provider name, address, and provider number. The telephone number should also be provided.

ITEMS 32-33. Not applicable to type of billing.

ITEM 34. This section should be used whenever additional information will assist in the evaluation for payment of rendered services.

EXHIBIT II

ITEM 1. Copy the patient's name EXACTLY as it appears on the validation of eligibility form.

ITEM 2. Indicate patient's address and telephone number.

ITEM 3. & 4. Copy the patient's New Jersey Medicaid Program HSP (Medicaid) Case number and Person number EXACTLY as it appears on the validation of eligibility form.

ITEM 5. Indicate patient's date of birth. Use six (6) digits (e.g., Sept. 10, 1980 is written 09/10/80). If only the year is known, enter the year. If actual birthdate is unavailable, enter the patient's age.

ITEM 6. Check appropriate block to identify patient's sex.

ITEM 7. Check appropriate block to indicate whether the patient has other Health Insurance or Liability Coverage. If yes, you must attach a copy of the decline notice or a copy of the explanation of payment.

ITEM 8. Check appropriate block.

If patient's illness or injury is work related.

If patient's injury resulted from an automobile accident.

ITEM 9. If not preprinted, write provider name, address, and provider number. The telephone number should also be provided.

ITEM 10. EPSDT Program Referral:

Complete this item for recipients under 21 years of age. Ask the patient and/or referring physician or clinic if this visit is a result of an EPSDT screening. Indicate if this patient is such a referral by checking the appropriate block. If the services required prior authorization, the approval must be submitted with the billing.

ITEM 11. Diagnosis is required. Where possible, indicate both a primary and secondary diagnosis. (Opticians: obtain diagnosis from the prescribing practitioner.) You may use the codes for diagnosis listed in the International Classification of Diseases 9th Revision Clinical Modi-

fication (ICD-9-CM) Code Number book. (Do not confuse the diagnosis with the patient's complaint or symptoms.)

- ITEM 12a. A—Indicate date of previous examination.
- ITEM 12b. B—Indicate date of current examination.
- ITEM 12c. C—Indicate date of the optical appliance was dispensed.
- ITEM 13. Prescription: A prescription for new lenses must always be given in minus cylinder.
- ITEMS 14.-15. Check appropriate block.
- ITEM 16. Indicate appropriate lens information and fabricating laboratory.
- ITEM 17. Indicate complete frame description.

When HCPCS code V2035YF is utilized, Item 17. must state "Patient's Own Medicaid Plastic Frame".

ITEM 18. The prescribing practitioner's name, IMP number must be clearly printed or typed. If the prescriber and the dispenser are the same, write the word "same". If the prescription for the appliance comes from a hospital or an eye clinic, the name of such hospital or clinic should be clearly printed or typed in item 18.

ITEM 18a. If the recipient is enrolled in the Medicaid Personal Physician Plan. Indicate the name of assigned Physician Case Manager and Individual Medicaid Practitioner number. Keep authorization form signed by Physician Case Manager in your file.

ITEM 19. Column I (Item Code):
Identify each item provided, use HCPCS Code as listed in Subchapter 4.

Column II (Laboratory Cost):
Indicate charge, reflecting actual lab invoice cost, for each item provided.

Column III, IV, V, & VI:
Leave blank (For Division Use Only).

ITEM 20. Leave blank (For Division Use Only).

ITEM 21. This section should be used whenever additional information will assist in the evaluation of an authorization request. It should also be used for describing any repairs to be made to existing appliances.

ITEM 22. PATIENT'S CERTIFICATION: Under ordinary circumstances, the patient must sign and date the claim form when services have been received. The claim form must indicate all services rendered prior to presenting it to the patient for signature.

If the patient's signature is unobtainable, (see chapter 49 of this manual, Administration 10:49-1.26).

ITEM 23. Provider's certification: Carefully read the Medicaid Provider Certification on this section.

The practitioner who personally performed or supervised the service(s) represented on the claim must put his/her signature on each claim before submitting for payment.

If a claim covers services performed by more than one practitioner, the group member who performed the last procedure should sign the claim.

(a)

**Independent Clinic Services Manual
Fees for Transportation Services
Notice of Correction: N.J.A.C. 10:66-3**

Take notice that errors appear in the fourth paragraph of the Summary of proposed rule, N.J.A.C. 10:66-3, published in the May 19, 1986 issue of the New Jersey Register at 18 N.J.R. 1053(a). The Summary should have appeared as follows:

Summary

...
The proposed increase is designed to be comparable with the fee increase that was granted to providers of ambulance and invalid coach services (see N.J.A.C. 10:50-1.5, 1.6 proposed by the Department of Human Services at 17 N.J.R. 1637(a) and adopted at 17 N.J.R. 2271(a) as R.1985 d.473, effective September 16, 1985).
...

TRANSPORTATION

TRANSPORTATION OPERATIONS

Proposals numbered PRN 1986-226, 227, 228, and 229 are authorized by Roger A. Bodman, Commissioner, Department of Transportation.

Submit comments by July 16, 1986 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

(b)

**Restricted Parking and Stopping
Routes 10 in Essex County, 23 in Morris County, 31
in Mercer County, 70 in Camden County
Proposed Amendment: N.J.A.C. 16:28A-1.8, 1.15,
1.22 and 1.37**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139,
39:4-199.

Proposal Number: PRN 1986-229.

The agency proposal follows:

Summary

The proposed amendments will establish "no parking" zones along Routes 10 in Livingston Township, Essex County; 31 in Pennington Borough, Mercer County and 70 in Cherry Hill Township, Camden County and "no parking bus stop" zones along Routes 23 in Butler Borough, Morris County and 70 in Pennsauken Township, Camden County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon requests from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations along the designated routes. The investigations proved that the establishment of "no parking" zones along Routes 10, 31 and 70, and "no parking bus stop" zones along Routes 23 and 70 were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.8, 1.15, 1.22 and 1.37 based upon the requests from local officials and the results of the traffic investigations.

Social Impact

The proposed amendments will establish "no parking" zones along Routes 10 in Livingston Township, Essex County; 31 in Pennington Borough, Mercer County and 70 in Cherry Hill Township, Camden County and "no parking bus stop" zones along Routes 23 in Butler Borough, Morris County and 70 in Pennsauken Township, Camden County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers of established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no parking" zones signs and the local officials will bear the costs for "no parking bus stop" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

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

16:28A-1.8 Route 10

(a) The certain parts of State highway Route 10 described in [(a) of] 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. (No change.)
- 2. No stopping or standing in Livingston Township, Essex County:
 - i. Along the eastbound side:
 - (1)-(2) (No change.)

(3) [From the prolongation of the westerly curb line of Greenwood Court to the westerly curb line of Shrewsbury Drive.] **From the easterly curb line of Sherbrooke Parkway to the westerly curb line of Shrewsbury Drive.**

ii. (No change.)

3. No stopping or standing between the hours of 7:00 A.M. to 9:00 A.M. and 4:00 P.M. to 6:00 P.M. in Livingston Township. Essex County:

i. (No change.)

4.-7. (No change.)

(b) (No change.)

16:28A-1.15 Route 23 (Temporary)

(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.i.-iv.(1) (No change.)

[2.](2) Along Service Road—Beginning at the southerly curb line of Fairfield Road and extending 140 feet southerly therefrom.

[v. Far side bus stop—] (3) Greenwood Avenue[;—

[(1)] Beginning at the southerly curb line of Greenwood Avenue and extending 100 feet southerly therefrom.

2.-7. (No change.)

8. Along the southbound (westerly) side in the Borough of Butler, Morris County:

i. Mid-block bus stop:

(1) Kinnelon Road and Cross Street—Beginning 265 feet south of the southerly curb line of Kinnelon Road and extending 135 feet southerly therefrom.

16:28A-1.22 Route 31

(a) The certain parts of State highway Route 31 described in [(a) of] 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 Pennington Borough, Mercer County:

i. Along both sides:

(1) For the entire corporate limits within Pennington Borough.

16:28A-1.37 Route 70

(a) The certain parts of State highway Route 70 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.-5. (No change.)

6. No stopping or standing in Cherry Hill Township, Camden County.

i. Along the northerly (westbound) side:

[(1)] Beginning 130 feet west of the westerly curb line of Springdale Road and extending 135 feet westerly therefrom;]

[(2)](1) From Connecticut Avenue to Virginia Avenue;

[(3)] From the Evesham Township—Cherry Hill Township corporate line and Maine Avenue;]

[(4)](2) From the easterly curb line of Georgia Avenue to a point 150 feet easterly therefrom.

ii. Along the southerly (eastbound) side:

[(1)] Beginning 250 feet west of the westerly curb line of Ellisburg Circle to the Evesham Township—Cherry Hill Township corporate line;

(2) From the westerly curb line of Edison Avenue to a point 80 feet westerly therefrom.]

(1) From the easterly curb line of Edison Avenue to a point 80 feet easterly therefrom.

(2) From Cooper Avenue to Main Avenue.

iii. Along both sides:

[(1)] From Cuthbert Boulevard to the Stoy's Landing Road Traffic circle;

(2) Including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation.]

(1) From Lexington Avenue Extension—Cuthbert Boulevard to Haddonfield—Stoy's Landing Road.

(2) From Main Avenue to the Cherry Hill Township—Evesham Township corporate line.

7. (No change.)

(b) The certain parts of State highway Route 70 described in this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provision of

N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1. Along the southerly [(eastbound)] (eastbound) side in Pennsauken Township, Camden County:

i. (No change.)

2. Along the northerly (westbound) side in Pennsauken Township, Camden County:

i. Far side bus stop:

(1) McClellan Avenue—Beginning at the prolongation of the westerly curb line of McClellan Avenue and extending 100 feet westerly therefrom.

[2.](3) Along the westbound (northerly) side in Cherry Hill Township, Camden County;

i.-ii. (No change.)

(a)

Restricted Parking and Stopping Route 67 in Bergen County

Proposed Amendment: N.J.A.C. 16:28A-1.71

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

Proposal Number: PRN 1986-227.

The agency proposal follows:

Summary

On December 16, 1985, the Department proposed an amendment to N.J.A.C. 16:28A-1.71 concerning restricted parking and stopping establishing "no parking bus stop" zones along Route 67 in Fort Lee Borough, Bergen County. The proposal appeared at 17 N.J.R. 2967(a) and was subsequently adopted and published on March 3, 1986 at 18 N.J.R. 487(a).

A subsequent departmental review found that prior jurisdictional authority had been granted to Bergen County to regulate parking along Palisade Avenue at Columbia Avenue and Kensington Road.

The Department therefore proposes to amend that portion of N.J.A.C. 16:28A-1.71 concerning the establishment of "no parking bus stop" zones at Palisade Avenue at Columbia Avenue and Kensington Road, Fort Lee Borough, Bergen County in view of the unnecessary DOT rule.

Social Impact

The proposed amendment will delete a provision of N.J.A.C. 16:28A-1.71 which is unnecessary because the area in question is already regulated by Bergen County. The motoring public will benefit since the amendment will delete a duplicative rule thereby alleviating confusion as to who is responsible for regulating Palisade Avenue.

Economic Impact

The proposed amendment will have no major significant economic impact since the amendment will not effect any new changes or restrictions or adversely affect the motoring public.

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

16:28A-1.71 Route 67

(a) The certain parts of State highway Route 67 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 westerly (southbound) side in Fort Lee Borough, Bergen County:

i. (No change.)

ii. For side bus stop:

(1) Along Palisade Avenue:

(A) Columbia Avenue—Beginning at the southerly curb line of Columbia Avenue and continuing to a point 120 feet south thereof.]

2. (No change.)

3. Along the easterly (northbound) side in Fort Lee Borough, Bergen County:

i. Far side bus stop[s]:

[(2)] Along Palisade Avenue:

(A) Kensington Road—Beginning at the northerly curb line of Kensington Road and continuing to a point 120 feet north thereof.]

ii. (No change.)

(b) (No change.)

(a)

**No Passing Zones
Route 27 in Somerset and Middlesex Counties and
28 in Union County**

Proposed Amendment: N.J.A.C. 16:29-1.21 and 1.57

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-201.1.

Proposal Number: PRN 1986-226.

The agency proposal follows:

Summary

The proposed amendments will establish "no passing" zones along Route 27 in Franklin Township, Somerset County and the Townships of South Brunswick, North Brunswick, Edison, Woodbridge and the Boroughs of Highland Park and Metuchen, Middlesex County, and 28 in Fanwood Borough, Scotch Plains Township, the Town of Westfield, Garwood Borough and Elizabeth City, Union County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon requests from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations along the routes in question. The investigations proved that the establishment of "no passing" zones along Routes 27 and 28 were warranted.

The Department therefore proposes to amend N.J.A.C. 16:29-1.21 and 1.57 based upon the requests from local officials and the results of the traffic investigations.

Social Impact

The proposed amendments will establish "no passing" zones along Route 27 in Franklin Township, Somerset County and the Townships of South Brunswick, North Brunswick, Edison, Woodbridge, and the Boroughs of Highland Park and Metuchen, Middlesex County and 28 in Fanwood Borough, Scotch Plains Township, the Town of Westfield, Garwood Borough and Elizabeth City, Union County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of lane lines along the highway. Motorists who violate the rules will be assessed the appropriate fine.

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

16:29-1.21 Route 27

(a) The following certain parts of State highway Route 27 described in [drawing number HPNZ-046 dated July 16, 1979.] this section shall be [and hereby are] designated and established as "no passing" zones[.]:

1. That part in the Township and Borough of Princeton, Mercer County and described in drawing number HPNZ-046 dated July 16, 1979.

2. That part in Franklin Township, Somerset County and the Townships of South Brunswick, North Brunswick, Edison, Woodbridge and the Boroughs of Highland Park and Metuchen, Middlesex County and described in drawing number HPNZ-095 dated February 13, 1986.

16:29-1.57 Route 28

(a) The following certain parts of State highway Route 28 described in this section shall be designated and established as "no passing" zones:
1.-2. (No change.)

3. That part within Fanwood Borough, Scotch Plains Township, the Town of Westfield, Garwood Borough, and Elizabeth City, Union County and described in drawing number HPNZ-094 dated December 2, 1985.

OAL NOTE: The current text of N.J.A.C. 16:29-1.57 may be found in this issue of the Register as a Notice of Adoption.

(b)

**Miscellaneous Traffic Rules
Through Streets, Stop and Yield Intersections
Route U.S. 130 in Gloucester County**

Proposed Amendment: 16:30-2.9

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-140.

Proposal Number: PRN 1986-228.

The agency proposal follows:

Summary

The proposed amendment will establish a "yield intersection" along Route U.S. 130 in Westville Borough, Gloucester County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from the local officials, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a "yield intersection" was warranted.

The Department therefore proposes to amend N.J.A.C. 16:30-2.9 based upon the request from local officials and the results of the traffic investigation.

Social Impact

The proposed amendment will establish a "yield intersection" along Route U.S. 130 in Westville Borough, Gloucester County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "YIELD" signs. Motorists who violate the rules will be assessed the appropriate fine.

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

16:30-2.9 Route U.S. 130

(a) [Under the provisions of N.J.S.A. 39:4-140 the] **The** certain parts of Route U.S. 130 [situated in the Township of North Brunswick, Middlesex County and] described in this section shall be designated as a Yield Intersection.

1. In the Township of North Brunswick, Middlesex County:

[1.]i. Center median at Franklin Road.

[i.](1) YIELD signs shall be installed in the center median facing east and west movements at Franklin Road.

[2.]ii. Route U.S. 130 and Huff Road:

[i.](1) YIELD signs shall be installed in the center median facing northbound traffic at Huff Road.

2. In Westville Borough, Gloucester County:

i. Route U.S. 130 northbound:

(1) A YIELD sign shall be installed on Route 45 facing northbound traffic at the intersection of Route U.S. 130 northbound.

(a)**NEW JERSEY TRANSIT CORPORATION****Destructive Competition
Procedure for Claims****Proposed New Rule: N.J.A.C. 16:74**

Authorized By: Jerome C. Premo, Executive Director, New Jersey Transit Corporation.

Authority: N.J.S.A. 27:25-5(e), (h), (k) and 27:25-7(b).

Proposal Number: PRN 1986-240.

Submit comments by July 16, 1986 to:

Albert R. Hasbrouck, III
Assistant Executive Director
New Jersey Transit Corporation (NJ TRANSIT)
P.O. Box 10009
Newark, New Jersey 07101

The agency proposal follows:

Summary

The New Jersey Transit Corporation (NJ TRANSIT) was established by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.) as the instrumentality of the State Government responsible to establish and provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner. One of the legislative findings set forth in the Act is that, in the provision of public transportation services, it is desirable to encourage to the maximum extent feasible the participation of private enterprise and to avoid destructive competition. To insure the accomplishment of this goal, N.J.S.A. 27:25-7(b) requires NJ TRANSIT to establish procedures for the handling of claims of destructive competition which are brought by private entities providing motor bus regular route service. A proposed rule establishing such procedures was published in the New Jersey Register on Monday, April 5, 1982 but was not adopted. The current proposed new rule contains a number of changes from the original proposal and establishes the required procedures.

Social Impact

It is not anticipated that this rule will have significant social impact. It simply establishes a procedure required by statute for the resolution of claims of destructive competition. The results of a proceeding in a particular case could have an impact on NJ TRANSIT or a carrier, their employees or users.

Economic Impact

It is not anticipated that this rule will have significant economic impact because it merely establishes a procedure required by law. The results of a proceeding in a particular case could have an economic impact upon a carrier or NJ TRANSIT, their employees or users.

**CHAPTER 74
PROCEDURE FOR CLAIMS****Subchapter 1. GENERAL PROVISIONS****16:74-1.1 Purpose**

The New Jersey Transit Corporation (NJ TRANSIT) was established by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.) as the instrumentality of the State Government responsible to establish and provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner. One of the legislative findings set forth in the Act is that, in the provision of public transportation services, it is desirable to encourage to the maximum extent feasible the participation of private enterprise and to avoid destructive competition. To insure the accomplishment of this goal, N.J.S.A. 27:25-7(b) requires NJ TRANSIT to establish procedures for the handling of claims of destructive competition which are brought by carriers providing motor bus regular route service.

16:74-1.2 Definitions

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

"Act" means the New Jersey Public Transportation Act of 1979.

"Actions by NJ TRANSIT" means the operation of equipment or facilities by NJ TRANSIT, its subsidiaries, or other carriers contracting with NJ TRANSIT pursuant to Section 6 of the Act to the extent that such operation by contract carriers is within the control of NJ TRANSIT.

"Affiliate" means any individual, company, proprietorship, corporation, trust or partnership where, by reason of the relationship of such entity with the carrier, whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, stockholders, a voting trust or trusts, a holding or investment company or companies, family relationships, or any other direct or indirect means, there is a reason to believe that the affairs of the carriers may be managed in the interest of such individual, company, proprietorship, corporation, trust or partnership.

"Board" means the Board of Directors of NJ TRANSIT.

"Carrier" means any individual, co-partnership, association, corporation, joint stock company, trustee or receiver or any affiliate as defined above operating or controlling regular route motor bus service on established routes within the State or between points in this State and points in adjacent states. When reference is made hereafter to a "carrier" it shall also mean its affiliate or affiliates as defined above.

"Established routes" means all regular intrastate or interstate routes as authorized by NJ TRANSIT, the New Jersey Department of Transportation, the Interstate Commerce Commission, a municipality, or any other regulatory body.

"Equipment or facilities" means passenger stations, shelters and terminals, automobile parking facilities, ramps, track connections, signal systems, power systems, information and communication systems, roadbeds, transit lanes or rights of way, equipment storage and servicing facilities, bridges, grade crossings, rail cars, locomotives, motor bus and other motor vehicles, maintenance and garage facilities, revenue handling equipment and any other equipment, facility or property useful for or related to the provision of public transportation service.

"Executive Director" means the Executive Director of NJ TRANSIT or his designee.

"Motorbus regular route services" means the operation of any motor bus or motor buses on streets, public highways or other facilities, over a fixed route and between fixed termini on a regular schedule for the purpose of carrying passengers for hire or otherwise, in this State or between points in this State and points in other states.

"NJ TRANSIT" means the New Jersey Transit Corporation.

"Rail passenger service" means and includes the operations of a railroad, subway, street, traction or electric railway for the purpose of carrying passengers in this State or between points in this State and points in other states.

SUBCHAPTER 2. PROCEDURES**16:74-2.1 Filing of Claims**

(a) All claims must be filed in writing with NJ TRANSIT's Department of Compliance, Market Street and McCarter Highway, P.O. Box 10009, Newark, New Jersey 07101.

(b) Claims may be filed only by properly certified carriers providing regular route motor bus services.

(c) The claim must contain the following information or it will not be cognizable under this chapter or N.J.S.A. 27:25-7(b):

1. The names and addresses of the carrier and its officers;
2. A copy of the relevant operating authority or Certificate of Public Convenience and Necessity issued by the New Jersey Department of Transportation, Interstate Commerce Commission, a municipality, or any other regulatory body;
3. A description of the actions of NJ TRANSIT alleged to be destructively competitive including but not limited to the date of such actions and the actions taken by the carrier in response thereto. This statement must contain the facts upon which the carrier relies to support its claim of destructive competition;
4. The economic and operational impact of the alleged acts of destructive competition on the carrier or its employees and users;
5. A statement setting forth the carrier's reasons why particular competitive actions of NJ TRANSIT are alleged to be "destructively competitive";
6. A statement of the relief sought, including alternatives deemed appropriate by the carrier.

(d) Nothing in this section shall be construed to prevent the carrier from presenting additional facts to the Administrative Law Judge (ALJ) for his or her consideration.

16:74-2.2 Conferences

(a) Settlement conference will be held in accordance with the provisions of N.J.A.C. 1:1-5.4.

(b) Unaccepted proposals of settlement or of adjustment not agreed to shall be privileged and shall not be admissible in evidence against NJ TRANSIT, the carrier, or their attorneys.

16:74-2.3 Transmittal to Office of Administrative Law (OAL); Board
When the carrier has satisfied all of the above requirements, the matter shall be considered a contested case and the Executive Director or his designee shall, within 60 days of receipt of the completed claim, refer the complaint to the OAL to be processed in accordance with N.J.S.A. 52:14F-1 et seq. and the applicable rules and regulations of the OAL.

16:74-2.4 Factors to be considered
(a) The following factors may be considered by the ALJ in determining whether NJ TRANSIT has engaged in destructive competition:

1. Which carrier was the first to provide the service;
2. Whether the action of NJ TRANSIT was a significant cause of the adverse impact on the carrier;
3. Whether NJ TRANSIT is complying with all applicable federal and State laws, its Certificates of Public Convenience and Necessity and applicable tariffs, in providing the service alleged to be destructively competitive;
4. The inherent benefits of the services to the rider, including, but not limited to, destination, door to door travel time, frequency of service, comfort, cost, transfer frequencies or proximity to the riders' residence; and
5. Whether the NJ TRANSIT service alleged to be destructively competitive is in the public interest.

(b) Nothing in this section should be construed to prevent the ALJ from considering factors other than those set forth in this section in determining whether NJ TRANSIT has engaged in destructive competition.

16:74-2.5 Remedy and Order
(a) The sole remedy that may be recommended by the ALJ pursuant to this chapter and N.J.S.A. 27:25-7(b), is to direct NJ TRANSIT to cease and desist in whole or part from using its equipment or facilities in a destructively competitive manner.

(b) Upon receipt of the Initial Decision of the ALJ, the Executive Director shall present the matter to the Board and the Board shall adopt an order or final decision accepting, rejecting, or modifying the Initial Decision by the ALJ or remanding the decision to the OAL all in accordance with N.J.A.C. 1:1-16.5 and 1:1-16.6.

16:74-2.5 Effective date
These regulations shall not apply to motorbus regular route and rail passenger services provided as of the initial promulgation of these regulations or to proceedings instituted prior to the initial promulgation of these regulations.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Alternate Benefit Program Contributions; Late Payment

Proposed New Rule: N.J.A.C. 17:1-2.37

Authorized By: Douglas R. Forrester, Director, Division of Pensions.

Authority: N.J.S.A. 18A:66-168 et seq., specifically 18A:66-192.

Proposal Number: PRN 1986-237.

Submit comments by July 16, 1986 to:
Peter J. Gorman, Esq.
Administrative Practice Officer
20 West Front Street, CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The purpose of this proposed new rule is to set a time limit for transmittal of employee contributions by participating institutions under the Alternate Benefit Program. This program is a defined contribution plan for the faculty and professional staff members of the public universities and colleges in the State and the professional staff of the Department of Higher Education.

The Division of Pensions is responsible for establishing the intervals for payment of contributions under the program. A time limit for payment of the contributions was never previously established by regulation. However, since the participant's benefits are determined primarily upon

the contributions to the participant's account and the amounts earned on them, the setting of a payment interval for the timely crediting of contributions is important to insure the greatest potential for earnings.

The proposed new rule would require employee contributions to be remitted to the carrier within 30 days after the month in which the contributions are withheld, or within 15 days of receipt from the carrier of the statement of amount owed by the institution, whichever is later, but in no event later than 45 days after month in which the contributions are withheld. If the contributions are not paid within the time limit, employers are required to pay interest, at the rate used by the carrier underwriting the annuities for crediting interest to participant accounts which receive interest for the month after the month in which the contributions are withheld, for each day after the time limit the contributions remain unpaid.

Social Impact

The proposed new rule will benefit all participants in the Alternate Benefit Program by insuring timely payment of employee contributions to their annuity accounts or the payment of interest on the contributions if they are not paid timely.

Economic Impact

No significant economic impact is anticipated. Contribution payments generally have been made by employers within the time limit specified in the proposed new rule. Interest on late contribution payments would be very small unless the delay in payment is lengthy.

Full text of the proposed new rule follows:

17:1-2.37 Contributions; late payment

(a) Participating institutions, which shall include the State for locations on state centralized payroll, shall pay employee contributions (deductions and reductions) to the carrier underwriting annuity contracts within 30 days after the month in which the contributions are withheld, or within 15 days of receipt from the carrier of the statement of amount owed by the institution, whichever is later, but in no event later than 45 days after the month in which the contributions are withheld.

(b) If the contributions are not paid within the time limits of (a) above, the participating institution shall pay interest on the contributions, at the rate used by the carrier for crediting interest to participant accounts which receive interest for the month after the month in which the contributions are withheld, for each day after the time limit the contributions remain unpaid.

(c) The daily rate for interest on the contributions shall be the annual rate divided by 365, rounded to the nearest one-hundredth percent. The interest payable for each participant shall be indicated on the report to the carrier when the interest is paid.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Corporation Business Tax Entire Net Income; Interest on Indebtedness; Determining Stock Ownership; Offset

Proposed Amendment: N.J.A.C. 18:7-5.5

Authorized By: John R. Baldwin, Director, Division of Taxation
Authority: N.J.S.A. 54:10A-27.

Proposal Number: PRN 1986-238.

Submit comments by July 16, 1986 to:
Nicholas Catalano
Assistant Chief Tax Counselor
Division of Taxation
50 Barrack Street, CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed amendment relates to the Corporation Business Tax Act, N.J.S.A. 54:10A-1, et seq., particularly section 4(k), and N.J.A.C. 18:7-5.5. The Act and the rule involve an addback to entire net income of interest on indebtedness owed to a stockholder owning 10 percent or more of taxpayer's outstanding shares of capital stock. An offset is

possible, in whole or in part, if the 10 percent stockholder (the creditor) is indebted to the taxpayer and there is interest on such indebtedness to taxpayer. The provisions of the proposed amendment contain definitions that are also found at N.J.A.C. 18:7-4.5 and 4.6 and are repeated here for emphasis, and also to aid any research as to what is the indebtedness upon which taxpayer owes interest that he cannot take as a deduction in computing its entire net income tax base. This is an area of the law that needs further clarification as a result of decisions of the New Jersey Supreme Court in the case of *Fedders Financial Corp. v. Director, Division of Taxation*, 96 N.J. 376 (1984) and *Mobay Chemical Corp. v. Director, Division of Taxation*, 96 N.J. 407 (1984). The proposed amendment contains examples of the application of the rule and are in accord with the practice, policy and administration consistently applied in the light of the Act, case law, rules, forms and instructions.

Social Impact

Adoption of the amendment should clarify potential problems in computing the entire net income tax base and should aid taxpayers, their attorneys, accountants and the public itself, and may prevent unnecessary litigation with attendant costs of court, fees, time, labor and effort as well as dollars. The addback and possible offset may also make lighter the time spent in hearings and conferences, the Tax Court, Superior Court, Appellate Division and perhaps also the New Jersey Supreme Court. The Division of Taxation prefers to minimize litigation when possible.

Economic Impact

There is minimal economic impact caused by the proposed amendment. Due to the current statute, rules and case law relating to interest on indebtedness, State revenue is not impacted substantially by this proposal which is intended to clear any possible confusion in the area covered by the proposed amendment. Costs of administration on the Division's side and costs of preparation of corporation business tax returns on the taxpayers' side should lessen somewhat.

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

18:7-5.5 Entire net income; [degree of stock ownership by creditor a factor in computing includible indebtedness] **interest on indebtedness; determining stock ownership; offset**

[The regulations of Section 4.5 and 4.6 of this Chapter relating to the manner or degree of direct or indirect stock ownership by a creditor in determining includability of indebtedness in the purpose of computing entire net worth, are also applicable in determining includability of interest paid or accrued on such indebtedness for the purpose of computing entire net income.]

(a) "Indebtedness" is not limited in scope by the duration thereof and thus includes all debts due, whether money, goods or services, including, inter alia, accruals of salaries, bonuses and dividends, as well as interest accrued on indebtedness.

(b) "Indebtedness owing directly or indirectly" includes but is not limited to all indebtedness owing to any stockholder or shareholder and to members of his immediate family where a stockholder and members of his immediate family together or in the aggregate own or beneficially own 10 percent or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes.

(c) "Immediate family" includes the collective body of persons, consisting of parents, children and other relatives, living together in one household in a permanent and domestic character under one head or management.

(d) Direct indebtedness: In the case of a creditor, corporate or otherwise (other than an individual), including an estate, trust or other entity, indebtedness is includable by reason of direct holding of taxpayer's stock by the creditor whether or not the creditor is functioning as a mere conduit of funds from a third party source.

(e) Indirect indebtedness: Indebtedness must be owing directly or indirectly to a 10 percent shareholder. Indebtedness owing by a taxpayer to a commonly controlled creditor is presumed to be owing indirectly to the common parent. However, indebtedness between commonly controlled debtors and creditors may not be attributable as owing indirectly to the common shareholder if it can be shown that the common shareholder was in no way the source of the funds. The taxpayer must establish that the common shareholder was not the source of the funds since it has the burden of defeating the presumption. The taxpayer must conclusively establish that:

1. The creditor is merely a conduit of funds from an unrelated third party source; or
2. The indebtedness was from funds generated by the creditor from its own operations and clearly not in any way attributable to or funded by the

common shareholder.

Example 1: A corporation owns 100 percent of the stock of B Corporation and C Corporation, and these subsidiaries are engaged in their respective businesses. B Corporation has generated unneeded cash from its operation or has sold some of its securities to third persons (other than to the parent corporation) and the proceeds are available for loans. B Corporation then advances some of that money to C Corporation. C Corporation's indebtedness is not directly owed to A Corporation.

Example 2: D Corporation owns 100 percent of the stock of E Corporation and F Corporation and these subsidiaries are engaged in their respective businesses. D Corporation sold securities and advanced the proceeds to E Corporation, which in turn made loans to F Corporation. This indebtedness would be indirectly owed to D Corporation.

Example 3: G Corporation owns 100 percent of the stock of H Corporation and K Corporation and these subsidiaries are engaged in their respective businesses. G Corporation made advances to H Corporation that had also obtained funds by borrowings from nonrelated creditors. K Corporation borrows from H Corporation. It is presumed that K Corporation's indebtedness is indirectly owed to G Corporation. However, the presumption is not conclusive. To the extent that K Corporation can establish that its indebtedness to H Corporation is in no way funded by the advances from G Corporation to H Corporation, that indebtedness would not be owing indirectly to the parent G Corporation.

(f) For the purpose of determining the degree of stock ownership of a corporate creditor, all the shares of the taxpayer's capital stock held by all corporations bearing the relationship of parent, subsidiary or affiliate of the corporate creditor shall be aggregated.

(g) Taxpayer's indebtedness to a stockholder or shareholder includes both the direct ownership or the beneficial ownership of 10 percent or more of the aggregate outstanding shares of taxpayer's capital stock of all classes.

Example: P Corporation owns 100 percent of the stock of S Corporation, which in turn owns 100 percent of Z Corporation. P Corporation made loans or otherwise provided funds directly to Z Corporation. The indebtedness from Z Corporation to P Corporation is properly includable in the determination of Z Corporation's net worth since P Corporation beneficially owns Z Corporation by being the 100 percent stockholder of S Corporation.

(h) The provisions of (a) through (g) above relating to the manner or degree of direct or indirect stock ownership by a creditor are applicable in determining deductibility of interest paid or accrued to holders of 10 percent or more of the aggregate outstanding shares of the taxpayer's capital stock of all classes.

(i) In determining the percent ownership of investment for purposes of computing the dividend exclusion, a taxpayer can aggregate its ownership of stock by basing its computation on its ownership equity in the payor. No part of such investment may be determined with reference to loans or advances but must be based upon investment in capital stock.

Example 1: Corporation A received a dividend from Corporation B and a dividend from Corporation C. Corporation A owns 90 percent of Corporation B. Corporation A owns 20 percent of Corporation C. Corporation B owns 70 percent of Corporation C. The remaining shares of Corporation B and Corporation C are owned by unrelated persons.

By literal terms of the Act, the dividend received by Corporation A from its 90 percent owned Corporation B is excludable from entire net income.

Since the equity of Corporation A in Corporation C is 80 percent or more ownership, it may also exclude the dividends received from corporation C from entire net income.

Ownership equity of Corporation A in Corporation C:	
Direct investment in Corporation C	20%
Investment in Corporation B	90%
Investment of Corporation B in Corporation C	70%
Indirect investment in Corporation C	.90 x .70 = 63%
Aggregate ownership by Corporation A of the stock of Corporation C	83%

Example 2: Corporation D received a dividend from Corporation E and a dividend from Corporation F. Corporation D owns 90 percent of Corporation E. Corporation D owns 20 percent of Corporation F. Corporation E owns 60 percent of Corporation F. The remaining shares of Corporation E and Corporation F are owned by unrelated persons.

By the literal terms of the Act, the dividend received by Corporation D from its 90 percent owned Corporation E is excludable from entire net income.

Since the equity of Corporation D in Corporation F is less than 80 percent ownership, it may only exclude 50 percent of the dividend received from Corporation F from entire net income.

Ownership equity of Corporation D in Corporation F:		
Direct investment in Corporation F		20%
Investment in Corporation E	90%	
Investment of Corporation E in Corporation F	60%	
Indirect investment in Corporation F	.90 x .60 =	54%
Aggregate ownership by Corporation D of the stock of Corporation F		74%

(j) The taxpayer may offset against includable interest on indebtedness owed to any creditor the amount of interest expense of that creditor owed to taxpayer.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Advertising

General Provisions

Proposed Readoption with Amendments: N.J.A.C. 19:51

Authorized By: Casino Control Commission, Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-69 and 5:12-70(o).

Proposal Number: PRN 1986-233.

Submit comments by July 16, 1986 to:

Carole R. Jacobson, Assistant Counsel
Legal Division
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Casino Control Commission proposes to readopt N.J.A.C. 19:51 concerning advertising. The rules will expire on November 2, 1986.

The rules were promulgated in order to implement the applicable provisions of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) which require the Commission to ensure that advertising shall conform to standards of good taste and shall not be false, deceptive or misleading in any manner whatsoever (see N.J.S.A. 5:12-70(o)). This chapter was previously amended in 1981. (See 13 N.J.R. 542(a) and 13 N.J.R. 780 (d).) The 1981 amendments, among other things, abolished the requirement that casino hotel licensees and applicants submit copies of all advertising to the Commission prior to broadcast or publication.

Amendments are being proposed to the following sections for the following reasons:

1. N.J.A.C. 19:51-1.1 (Applicability of advertising regulations): The proposed amendments to this section would (1) modify the existing language of 1.1(a) to clarify that any advertising by a casino licensee or applicant, or any agent thereof, shall be subject to the standards established by these regulations; and (2) include junket representatives and enterprises in the list of entities governed by the Commission's advertising regulations. This amendment reflects Commission concern that such persons, who deal directly with the public in a highly sensitive area of casino activity, should be required to adhere to the criteria governing advertising in order to protect the public interest.

2. N.J.A.C. 19:51-1.2 (General criteria governing advertising): The proposed amendments to this section would delete the requirements that advertising portray casinos only as an integral element of the hospitality industry in New Jersey and Atlantic City and that such advertising be directed to the nature and tone of the hospitality industry. These requirements are no longer mandated by statute.

3. N.J.A.C. 19:51-1.3 (Prohibited advertising of casino gaming activity): The amendments to this section would delete the language that no advertisement shall stress gaming as its dominant theme, and that advertising shall portray gaming as an activity conducted in an atmosphere of social graciousness, and are being proposed to conform the regulation to the statute. (See 5:12-70(o).)

4. N.J.A.C. 19:51-1.4 (Commission approval): The proposed amendments to this section delete the language requiring casino licensees or applicants or casino service industry licensees or applicants to submit a report, semi-annually, of advertising activity related to casino gaming or casino gaming activity containing samples of advertisements and promotions to the Casino Control Commission. This requirement has proved to be more restrictive than necessary, since the same information currently being submitted to the Commission may be found in the files of the licensees or applicants and it is reviewed periodically by the Division of Gaming Enforcement.

Social Impact

The readoption of these rules, with the proposed amendments, will assist the Commission in fulfilling its duty to protect the public against false, misleading or prurient advertising. The proposed amendment to N.J.A.C. 19:51-1.1(c) will further protect the public by including junket representative and enterprises within the umbrella of those entities which must act in accordance with the Commission advertising regulations. The amendments to 1.2(a) and (b) and 1.3(a) are being proposed to conform the regulations to the statute and should not have any significant social impact. Further, it is not anticipated that the proposed elimination of 1.4(b) will have any social impact, as the proposal will not relieve the licensees and applicants of their continuing responsibility to maintain samples of advertisements at their place of business which may be reviewed by the Division of Gaming Enforcement or the Commission. Finally, the amendment to 1.4(c) is merely a technical change and should not have any social impact.

Economic Impact

Compliance with the record keeping requirements of these rules imposes an economic impact on casino licensees and staff. However, because of the diverse manner in which licensees comply with these requirements, it is not possible to assess a specific cost of the economic impact of implementing the chapter.

The elimination of N.J.A.C. 19:51-1.2(a) and (b) and 1.3(a) would conform the regulations to existing practice as provided by the statute and should not have any economic impact. The elimination of 1.4(b) would serve to reduce the amount of time spent by licensees and applicants in submitting reports and samples of advertisements to the Casino Control Commission, and reduce the time and physical space previously devoted by the Commission to the filing of these reports and samples. This should result in reduced costs for the licensees and applicants and the Commission. The amendment to 1.4(c) is a technical correction and should not have any economic impact.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 19:51.

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

19:51-1.1 Applicability of advertising regulations

(a) Any inducement or other means of calling to the attention of the public by advertising of any [other] sort including broadcasting, publication, or any other means of dissemination by a casino licensee or applicant, or any agent thereof, [which is directly related to casino gaming or casino gaming activity] shall be subject to the standards established by these regulations. [All other advertisements, advertising activity or promotional materials of a casino licensee or applicant shall be subject to the standards established by N.J.A.C. 19:51-1.2.]

(b) (No change.)

(c) **Any advertisement by an applicant for a junket representative license or a junket representative licensee or by an applicant for a junket enterprise license or a junket enterprise licensee shall be subject to these regulations if such an advertisement is directly related to casino gaming or casino gaming activity.**

19:51-1.2 General criteria governing advertising

[(a) Advertising shall adhere to the legislative mandate that casinos licensed by the Commission are offered only as an integral element of the hospitality industry and not as an industry unto themselves.

(b) Advertising shall be directed to the nature and tone of the existing hospitality industry in New Jersey and Atlantic City.]

Renumber (c)-(f) as (a)-(d) (No change in text.)

19:51-1.3 Prohibited advertising of casino gaming or casino gaming activity

[(a) No advertisement shall stress gaming as its dominant theme. All advertising shall portray gaming as an activity conducted in an atmosphere of social graciousness.]

Renumber (b) and (c) as (a) and (b) (No change in text.)

19:51-1.4 Commission approval

(a) All advertising[,], or in the case of standard or recurring advertising, a sample thereof, which is directly related to casino gaming or casino gaming activity, shall be maintained by the casino licensee or applicant, or the casino service industry licensee or applicant, **or the junket representative licensee or applicant or the junket enterprise licensee or applicant**, as appropriate, for a period of one year from the date of placement of such advertisement. Advertising which must be maintained shall include such advertising as may have been placed for or on behalf of the casino licensee or applicant or casino service industry licensee or applicant **or the junket representative licensee or applicant or the junket enterprise licensee or applicant**. Advertising required to be maintained by this section shall be maintained at the principal place of business of the licensee or applicant, and shall be made available or produced for inspection upon the request of the Casino Control Commission or the Division of Gaming Enforcement.

[(b) Each casino licensee or applicant or casino service industry licensee or applicant shall submit a report, semiannually, of advertising activity related to casino gaming or casino gaming activity to the Casino Control Commission which shall include typical samples and or facsimiles of advertisements and promotions, and describe in relative form the program of the licensee as it pertains to advertising related to casino gaming or casino gaming activity, whether such advertisements or promotions were placed by the licensee, applicant or an agent therefore.]

[(c)] (b) Each casino licensee or applicant shall maintain a file containing samples of the types and forms of advertising [all] **and** promotional materials not directly related to casino gaming or casino gaming activity for a period of six months from the date of placement of such advertisement or promotion. Such advertising shall be maintained at the principal place of business of the casino licensee or applicant, and shall be made available or produced for inspection upon the request of the Casino Control Commission or the Division of Gaming Enforcement.

Renumber (d) as (c) (No change in text.)

RULE ADOPTIONS

CIVIL SERVICE

(a)

CIVIL SERVICE COMMISSION

Separations and Demotions Layoffs and Demotions

Readoption: N.J.A.C. 4:1-16, 4:2-16, 4:3-16, 4:1-24

Proposed: March 3, 1986 at 18 N.J.R. 450(a).

Adopted: April 29, 1986 by the Civil Service Commission, Eugene J. McCaffrey, Sr., President.

Filed: May 14, 1986 as R.1986 d.206, with portions, of the proposal not adopted but still pending.

Authority: N.J.S.A. 11:6-2, 11:9-12, 11:13-1, 11:15-9 and 10, 11:22-10.1, 11:26D-1.

Effective Date: May 14, 1986.

Expiration Date: January 28, 1990 (4:1, 4:2); June 4, 1989 (4:3).

Summary of Public Comments and Agency Responses:

On March 19, 1986, the Commission conducted a public hearing to consider proposed new rules to be codified at N.J.A.C. 4:1-16 and 4:1-24. Further, the Commission considered proposed amendments to N.J.A.C. 4:1-2.1, 4:1-5.2 and 4:1-11.2 as well as the repeal of 4:1-16, 4:2-16, 4:3-16 and 4:1-24.

The Commission also proposed the existing text of N.J.A.C. 4:1-16, 4:2-16, 4:3-16 and 4:1-24 for readoption, as a technical procedure to assure regulatory continuity while allowing interested parties the appropriate time to comment and the Commission to deliberate on any changes to the proposed rules. At its April 29, 1986 meeting, the Commission readopted the existing text of N.J.A.C. 4:1-16, 4:2-16, 4:3-16 and 4:1-24 in order to maintain a mechanism for separations, layoffs and demotions. However, in order to allow additional time to consider comments that were received and possible changes on the proposed new rules the Commission decided to delay adoption of the remaining parts of the proposal until a future meeting. Proposed New Rules (N.J.A.C. 4:1-16, 4:1-24), Proposed Amendments (N.J.A.C. 4:1-2.1, 4:1-5.2 and 4:1-11.2), and Proposed Repeals (N.J.A.C. 4:1-16, 4:2-16, 4:3-16, and 4:1-24) found at 18 N.J.R. 450(a) are still pending. After further deliberations, the Commission will forward a Notice of Adoption to the New Jersey Register of its action on the proposed new rules.

Full text of the readoptions may be found in the New Jersey Administrative Code at N.J.A.C. 4:1-16, 4:2-16, 4:3-16, 4:1-24.

COMMUNITY AFFAIRS

DIVISION OF HOUSING AND DEVELOPMENT

(b)

Uniform Construction Code Fire Safety Code

Adopted Amendments: N.J.A.C. 5:18-1.1, 1.4, 1.5, 1.6, 2.3

Adopted New Rule: N.J.A.C. 5:18-4

Proposed: May 20, 1985 at 17 N.J.R. 1161(a).

Adopted: May 16, 1986 by Leonard S. Coleman, Jr.,
Commissioner, Department of Community Affairs.

Filed: May 19, 1986 as R.1986 d.214, with technical and
substantive changes not requiring additional public notice and
comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-198.

Effective Date: June 16, 1986.

Expiration Date: February 1, 1990.

Summary of Public Comments and Agency Responses:

In addition to changes of a purely technical nature, the following substantive changes are made upon adoption:

5:18-1.4 Subsection (d) of this section will be reserved until the full text of Subchapter 4 of the Uniform Fire Code is fully adopted. This subsection will supersede existing State regulations dealing with fire safety, pursuant to N.J.S.A. 52:27D-213(c).

5:18-1.5 Definitions are added for "Atrium", "Fire Barrier", "Nightclub", and "Smoke Barrier". A clear definition of these terms is essential for proper and efficient enforcement of provisions of the Uniform Fire Code.

5:18-4.1 In response to the volume and nature of public comment received on this proposal, a decision was made to adopt only those portions of the proposal dealing with buildings and businesses subject to use by large numbers of people and by persons subject to physical limitations due to age or physical condition. June 16, 1987 is established as the date by which compliance with the provisions of this adoption will be mandatory. The balance of the original proposal will be repropoed for reconsideration and further public comment. It is the Department's intention to establish effective dates for the balance of the buildings and businesses affected by the original proposal in such a manner that mandatory compliance with provisions to be adopted will be extended over a three year period from this adoption.

5:18-4.2 Provisions of the proposal establishing a compliance date one year following this adoption have been moved to Section 5:18-4.1. The additional provisions of this section are included in order to maintain as effective and enforceable those existing state and local requirements not in conflict with the provisions of this subchapter.

5:18-4.3 Has been significantly modified in response to comments received from building owners, from local code enforcement officials and from representatives of historical societies. The latter group expressed concern that the unique character or historical buildings was not recognized in the proposal. A subsection has been added to make clear the relationship that is to exist with buildings granted variations from Uniform Construction Code requirements.

5:18-4.5(b) Was added in response to requests from other state agencies who are required to meet Federal laws or regulations as a condition of funding.

5:18-4.7(b) through (f) These sections of the proposal caused considerable concern and will be repropoed for additional comment.

5:18-4.7(g) Was originally proposed as 5:18-4.7(f) and contained a phrase considered by many who commented to be entirely too subjective. The phrase has been removed for this adoption.

5:18-4.7(h) Proposed as section (g), was felt by Princeton University and others to be too broad in its impact without providing an attendant increase in fire safety. This section will be modified to incorporate standards for fire service access and will be repropoed.

5:18-4.8 As proposed, this section could have been interpreted to require the installation of fire pumps to deliver water to standpipes installed in high rise buildings. This was never the Department's intent and this section has been reworded to make that clear. Water volume capacities of standpipe systems have been reduced from the original proposal.

5:18-4.9(a)1. As proposed, this section could have been interpreted to require supervision of fire alarm systems in all institutional buildings, although that was not the Department's intent. An exception has been added.

5:18-4.9(c) As proposed, all automatic fire alarm systems would have been required to be supervised in accordance with provisions of the Uniform Construction Code. This section has been added to define the options available and to authorize the fire official to determine which method is acceptable, since availability of services at the local level may determine the option to be selected.

5:18-4.10 This section has been reformatted and is not significantly different from the proposal. The portion dealing with manual fire alarm requirements in educational uses has been modified and will be repropoed.

5:18-4.11(a)1. Much public comment centered on the proposed section which appeared to require the compliance of many existing fire escapes with newly adopted construction requirements. This section has been modified to require only new fire escapes to meet those more restrictive requirements. Existing, serviceable fire escapes need not be changed.

5:18-4.11(a)1.ii. This section has been modified to permit window access to fire escapes, in all cases, when serving a space with maximum occupant load of 10 persons.

5:18-4.11(a)1.iii. Deals with the prohibition of ladders on certain fire escapes and is being reserved to be proposed along with other amendments to this subchapter.

5:18-4.11(b) Most of this section is being reserved and will be repropoed. Subsection 2 is adopted and includes an exception for day nurseries which, while more restrictive than the proposal, incorporates existing requirements in the regulations of the Department of Human Services, which Department licenses such facilities.

5:18-4.11(f) The table has been limited to reflect only the Use Groups immediately affected by this adoption. The balance of the table will be repropoed.

5:18-4.11(g) This was originally proposed as 4.11(f) and will be repropoed. The Department received substantial comment from New Jersey Business and Industry Association regarding the impact of this section on existing laboratories in the State. Since this appears to comply with requirements in NFPA Standard 45, the industry standard for such facilities, further research will be necessary before this provision will be repropoed.

5:18-4.11(h) Was originally proposed as 5:18-4.11(g). Some ambiguous language has been deleted in this adoption.

5:18-4.11(i) This section was originally proposed as 5:18-4.11(h) and has been amended to relocate the provisions for emergency lighting to 4.11(j).

5:18-4.11(j) This is a new section, which appeared in the proposal under the general heading of means of egress lighting, and requires emergency lighting in those Use Groups immediately affected by this adoption. Few comments were received on this requirement when proposed and no modifications have been made.

5:18-4.11(k) This section was proposed as 5:18-4.11(i) and has been amended to reserve for reproposal an exception to exit sign requirements in Use Groups not immediately affected by this adoption and to include, as the result of many comments received, the provision that exit signs may have either red or green letters.

5:18-4.11(l) Means of egress door requirements, appearing in the proposal in 5:18-4.11(j) were the subject of substantial public comment. The bulk of this section will be repropoed.

5:18-4.11(m) and (n) These sections appeared in the proposal as sections (k) and (l) and were significantly modified as the result of public comment.

5:18-4.12(a) The table has been limited to reflect only the Use Groups immediately affected by this adoption. The balance of the table will be repropoed.

5:18-4.13 Substantial modifications have been made to reduce the requirements for vertical opening protection to bring them more in line with provisions of the Life Safety Code of the National Fire Protection Association (NFPA 101-85). Only those requirements of this section which pertain to those Use Groups immediately affected by this adoption are included. The bulk of this section will be repropoed, with modifications for further public comment.

5:18-4.15 Deals with requirements for smoke barriers and has been reformatted to remove possible confusion resulting from the reference to Use Group I-2 in section (a) of the proposal.

5:18-4.16 This section has been amended to delete the words "or amuse" to make clear the Department's intention to include only those buildings in which occupants were disoriented or barriers to exiting were present.

5:18-4.17 Has been reserved and will be repropoed.

5:18-4.18 The Department of Human Services has enforced regulations in certain Use Group I-2 (institutional) buildings described in this section which require the separation of boiler and furnace rooms from other portions of these uses. This section has been added to incorporate these existing requirements in this subchapter.

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

5:18-1.1 Title; division into subchapters

(a) (No change.)

(b) The code is divided into four parts:

1.-3. (No change.)

4. Subchapter 4 is entitled ****State* Fire Safety Code** and may be cited throughout the Code as N.J.A.C. 5:18-4 and when referred to in subchapter 4 of this chapter, may be referred to as this subchapter.

5:18-1.4 Applicability

(a) (No change.)

(b) The provisions contained in this Code shall not be construed as applying to the transportation of any article or substance shipped under the jurisdiction of and in compliance with the regulations prescribed by the military forces of the United States or the transportation of flammable or combustible liquids or hazardous materials or chemicals subject to the regulation and control of the New Jersey Department of Transportation or the United States Department of Transportation or other Federal Agency having jurisdiction.

1.-2. (No change.)

(c) (No change.)

(d) ***(Reserved)***

(e)-(g) (No change.)

5:18-1.5 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise. Where a term is not defined then the definition of that term found within the Uniform Construction Code, N.J.A.C. 5:23-1.4, shall govern:

...
****"Atrium"** means a floor opening or series of floor openings connecting two or more stories that is covered at the top of the series of openings and is used for purposes other than an enclosed stairway; elevator hoistway; escalator opening; or utility shaft used for plumbing, electrical, air conditioning, or communication facilities.*

...
"Common Areas", when used with reference to a covered mall building, shall include all areas not included within any retail establishment and shall also include the required means of egress from all retail establishments. When used with reference to buildings of use groups R-1 and R-2 shall mean all areas accessible to, and which may be utilized by, either the building occupants or the general public and shall include, but not be limited to, vestibules, hallways, stairways, landings and occupiable rooms and spaces not part of any dwelling unit; and shall also include any area accessible to the owner or manager or any person employed in the maintenance of the building which area is not part of any dwelling unit.

...
****"Fire barrier"** means a continuous membrane, either vertical or horizontal, such as a wall or floor assembly, that is designed and constructed with a specified fire resistance rating and located to limit the spread of fire and restrict the movement of smoke. Such barriers may have protected openings when a specific fire resistive rating is indicated by this Code. When a rating is required, existing walls, columns and floor/ceiling assemblies meeting the requirements of Federal Housing and Urban Development Rehabilitation Guidelines #8 or of Sections 1, 2, 3 and 4 of Appendix B of the BOCA Basic/National Existing Structures Code, 1984 Ed., shall be acceptable.*

...
"Maximum permitted occupancy" means the maximum number of persons which can be permitted in a building or portion thereof as established in accordance with N.J.A.C. 5:18-4.11(e).

...
****"Nightclub"** means any structure or portion thereof used primarily to provide for dancing or to present theatrical or musical entertainment or any other form of the performing arts and which affords less than 15 square feet net area per occupant where the service of food or beverage is incidental and where normal lighting levels are reduced during hours of operation. If the principal reason for attendance is to dance, to view a show, or to be entertained by a show or act, then the occupancy is to be defined as a nightclub even though full food service is offered.*

...
****"Smoke barrier"** means a continuous membrane, either vertical or horizontal, such as a wall, floor, or ceiling assembly, that is designed and constructed to restrict the movement of smoke. A smoke barrier may or may not have a fire resistance rating. Such barriers may have protected openings. When a fire resistive rating is required, existing walls, columns and floor/ceiling assemblies meeting the requirements of Federal Housing and Urban Development Rehabilitation Guidelines #8, or of Sections 1,2,3 and 4 of Appendix B of the BOCA Basic/National Existing Structures Code, 1984 Ed., shall be acceptable.*

...
"Story above grade" means any story having its finished floor surface entirely above grade except that a story which is partly or completely below grade (basement) shall be considered as a story above grade when the distance from grade to the finished surface of the floor above the basement is more than six feet for more than 50 percent of the total perimeter or more than 12 feet at any point.

5:18-1.6 Operative date

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

(c) The provisions of this Code found in Subchapter 4 shall take effect as provided in N.J.A.C. 5:18-4. *2)* *1* except that the fire official may require partial or full compliance sooner where an imminent hazard shall have been found to exist.

5:18-2.3 Variances

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

(e) Variations to requirements found in the Uniform Construction Code may only be granted by the Construction Official in accordance with N.J.A.C. 5:23-2.9.

SUBCHAPTER 4. FIRE SAFETY CODE

5:18-4.1 Code adopted*/Scope*

(a) Pursuant to authority of the Uniform Fire Safety Act (P.L. 1983, c.383, N.J.S.A. 52:27D-192 et seq.), the Commissioner hereby adopts this subchapter as the State Fire Safety Code.

*(b) The following buildings shall be in compliance with all applicable requirements of this subchapter by June 16, 1987.

1. Theaters incorporating a raised stage, platform, or thrust stage, proscenium curtain, fixed or portable scenery loft, lights, mechanical appliances or other theatrical accessories and equipment, equipped with fixed seats; and which are classified as Use Group A-1-A in accordance with the Uniform Construction Code.

2. Night clubs, dance halls, discotheques without a theatrical stage and which are classified as Use Group A-2 in accordance with the Uniform Construction Code.

3. Eating and drinking establishments which are primarily drinking establishments with a maximum permitted occupancy of 200 or more, and which are classified as Use Group A-3 in accordance with the Uniform Construction Code.

4. Amusement buildings and places of amusement designed to disorient, reduce vision, present barriers, or otherwise impede the free flow of traffic, such as haunted houses, fun houses, tunnels of love, and similar uses and which are classified as Use Group A-3 in accordance with the Uniform Construction Code.

5. Institutional buildings and similar facilities including hospitals and long-term care facilities, which house people suffering from physical limitations due to age, health or handicaps and which are classified as Use Group I-2 in accordance with the Uniform Construction Code.

6. Institutional buildings or similar facilities including acute alcoholism treatment, out-patient surgery, renal dialysis facilities, abortion clinics and birthing centers, and which are classified as Use Group I-2 in accordance with the Uniform Construction Code.

7. Day nurseries, children's shelter facilities, residential child care facilities and similar facilities with children below the age of 2-1/2 years, and which are classified as Use Group I-2 in accordance with the Uniform Construction Code.*

5:18-4.2 Compliance *[date]* *with the State Fire Prevention Code and other fire safety regulations*

(a) All buildings subject to requirements established by this subchapter which are not set forth in the regulations previously established by any State agency shall comply with those requirements established by this subchapter by the first anniversary of their effective date.]

*(b)**(a)* All buildings *which are specifically listed as under the scope of this subchapter as denoted in N.J.A.C. 5:18-4.1 and which are* subject to requirements previously established including, without limitation, any requirement of the *State* Fire Prevention Code N.J.A.C. 5:18-3.1 et seq.), *[which are included in this subchapter]* shall be in compliance with those requirements as of the effective date of this subchapter *and shall remain in compliance throughout the life of the structure*.

(b) All buildings which are not specifically listed as under the scope of this subchapter as denoted in N.J.A.C. 5:18-4.1 shall continue to be subject to the provisions of applicable existing fire safety requirements as promulgated by the State or local agency having jurisdiction and shall remain in compliance with those requirements throughout the life of the structure.

5:18-4.3 Relation to Uniform Construction Code *and other Codes*

(a) A building in full compliance with the subcodes adopted pursuant to the Uniform Construction Code Act and regulations in force at the time of its construction and possessing a valid certificate of occupancy shall not be required to conform to the more restrictive requirements established by this subchapter.

*[(a)]***(b)* A building in full compliance with the current fire safety requirements of the New Jersey Uniform Construction Code (N.J.A.C. 5:23), as determined by the construction official with the concurrence of the fire subcode official *and the fire official*, shall not be required to conform to more restrictive requirements established by this subchapter.

1. A determination as to whether a New Jersey Uniform Construction Code requirement involves fire safety shall, in a disputed case, be determined by the Bureau of Construction Code Enforcement after consultation with the Bureau of Fire Safety *and with the fire official* and with the concurrence of the Director, Division of Housing and Development.

2. For purposes of this subsection, "current fire safety requirements" means requirements set forth in the New Jersey Uniform Construction Code in effect at the time of adoption of the requirement as part of this subchapter.

*3. Existing fire suppression, smoke detector and fire alarm systems that meet the intent of NFPA standards and the New Jersey Uniform Construction Code shall be accepted as meeting the requirements of this Code.

(c) The applicability of provisions of this subchapter to existing buildings or structures, identified or classified by the Federal, State or local government authority as historic buildings, shall be determined by the local enforcing agency under the New Jersey Uniform Construction Code in consultation with the fire official, as outlined in Section 513.0 of the Building Officials and Code Administrators International, Inc. (BOCA) Basic/National Building Code, 1984 edition.

(d) A variation previously granted to a provision of an existing code, which provision contains requirements substantially the same as the comparable provision of the Uniform Fire Code shall remain valid, subject to the following conditions:

1. To be accepted, the variation must have been:

i. Granted in writing;

ii. Granted through formal process or procedures; and

iii. Granted upon a finding that equivalent life safety was provided.

2. Notwithstanding the provisions of this section contained above, nothing shall prevent the fire official from making a finding of imminent hazard pursuant to N.J.A.C. 5:18-2.14 or the construction official from making a finding of unsafe building pursuant to N.J.A.C. 5:23-2.32 and requiring correction of such hazard or unsafe condition in accordance with those regulations.*

5:18-4.4 Relation to *State* Fire Prevention Code

The requirements established by this subchapter are in addition to, and not in lieu of, requirements established by the State Fire Prevention Code (N.J.A.C. 5:18-3.1 et seq.).

5:18-4.5 *[Local]* *[m]**M*odifications

(a) Any municipality may, by ordinance, modify this subchapter so as to make it more restrictive or more inclusive; provided, however, that this subchapter may not be modified so as to be more restrictive than the New Jersey Uniform Construction Code (N.J.A.C. 5:23) or so as to include one- or two-family, owner-occupied dwellings.

(b) Nothing in this Code shall be construed as preventing any State agency, from exceeding provisions of this Code in making improvements to buildings under their jurisdiction, ownership or control when such changes are mandated by or through Federal law or Federal regulations as a condition of funding such agency. Such action shall not reduce the requirements of these regulations.

5:18-4.6 Pre-existing violations

No violation committed, and no liability, penalty, or forfeiture, with civil or criminal, incurred, prior to the repeal or revision of any regulation or any part thereof by the enactment of this subchapter, shall be discharged, released or affected by the repeal or revision of the regulation or part thereof under which such offense, liability, penalty or forfeiture was incurred, and indictments, prosecutions and actions for such offenses, liabilities, penalties or forfeitures committed or incurred, prior to the effective date of this subchapter, shall be commenced or continued and be proceeded with in all respects as if the regulation or part thereof had not been repealed or revised.

5:18-4.7 Fire suppression systems

(a) All buildings of Use Group A-2 *with a permitted occupant load of 50 or more* shall be equipped throughout with an automatic fire suppression system *installed* in accordance with the New Jersey Uniform Construction Code.

[1. Exception to (a) above: Buildings of Use Group A-2 having a permitted occupant load of less than 50.]

(b)-(f) *(Reserved)*

*[(f)**(g)* All **required** kitchen exhaust systems used in conjunction with cooking operations which produce grease laden vapors **in sufficient quantity to constitute a hazard]** shall be equipped with an automatic fire suppression system designed and installed in accordance with the New Jersey State Fire Prevention Code and the New Jersey Uniform Construction Code.

1. Exception to **[(f)**(g)*** above: Suppression shall not be required for systems serving completely enclosed ovens, steam tables, or auxiliary equipment which does not produce grease laden vapors.

*[(g)**(h) (Reserved)*

*[(h)**(i) (Reserved)*

*[(i)**(j)* Fire suppression systems required by this code shall be supervised by one of the following methods **as determined by the fire official**:

1. Approved central station system in accordance with NFIPA 71;
2. Approved proprietary system in accordance with NFIPA 72D;
3. Approved remote station system of the jurisdiction in accordance with NFIPA 72C; **or***
4. Approved local alarm service which will cause the sounding of an NFIPA 72A;

5. The following are exceptions to (i) above:

- i. Underground gate valves with roadway boxes;
- ii. Halogenated extinguishing systems;
- iii. Carbon dioxide extinguishing systems;
- iv. Dry chemical extinguishing systems; **and***
- v. Limited area sprinkler systems.

[(j) Fire suppression systems in Use Group R-1 and Use Group M High-rise buildings shall be supervised as required by N.J.A.C. 5:18-4.17.]

5:18-4.8 Standpipe system

(a) All buildings having floors used for human occupancy located more than six stories above grade shall be equipped with **wet** standpipes* **Standpipes shall be** located and installed in accordance with the New Jersey Uniform Construction Code except as follows:

1. Standpipes shall be capable of **delivering 500 gpm at 65 psi to the topmost remote standpipe outlet.** **accepting a delivery by fire department apparatus of a minimum of 250 gpm at 65 psi to the topmost remote standpipe outlet in buildings equipped throughout with an automatic fire suppression system or a minimum of 500 gpm at 65 psi to the topmost remote standpipe outlet in all other buildings.***

2. Hose and hose cabinets shall not be required.

5:18-4.9 Automatic fire alarms

(a) An automatic fire alarm system shall be installed as required **in (b) through (e)]** below in accordance with the New Jersey Uniform Construction Code.

1. In all buildings of Use Group I;

i. Required alarm systems in buildings of Use Group I must be supervised.

(1) Exception to i above: Automatic fire alarm systems in day nurseries are not required to be supervised.*

2.-4. **(Reserved)***

(b) An automatic fire alarm system shall not be required in buildings equipped throughout with an automatic fire suppression system, a manual fire alarm system and single station smoke detectors located in the immediate vicinity of sleeping areas in accordance with NFIPA 74.

(c) Automatic fire alarm systems required to be supervised by this Code shall employ one of the following methods as determined by the fire official:

1. **Approved central station system in accordance with NFIPA 71;**
2. **Approved proprietary system in accordance with NFIPA 72D;**
3. **Approved remote station system of the jurisdiction in accordance with NFIPA 72C; and**
4. **Approved local alarm service which will cause the sounding of an alarm in accordance with NFIPA 72A.***

5:18-4.10 Manual fire alarms

(a) A manual fire alarm system, designed and installed in accordance with the Uniform Construction Code, shall be required **in conjunction with an automatic fire alarm system required by N.J.A.C. 5:18-4.9 and as follows]**:

[1. In buildings of Use Group R-1 having an occupant load of 25 or more or having 10 or more guest rooms;]

*[2.]***I.* In all** buildings more than 3 stories in height having an occupant load of 25 or more **[or having 10 or more dwelling units]*:** and

2. (Reserved)

[3. In all buildings of Use Group E.]

3. In all buildings required to have an automatic fire alarm system in accordance with N.J.A.C. 5:18-4.9.

5:18-4.11 Means of egress

(a) Every story utilized for human occupancy having an occupant load of 500 or less shall be provided with a minimum of two exits, except as provided in (b) below. Every story having an occupant load of 501 to 1,000 shall have a minimum of three exits. Every story having an occupant load of more than 1,000 shall have a minimum of four exits.

1. When more than one exit is required, an existing fire escape shall be accepted as providing one of the required means of egress **unless judged to be dangerous for use under emergency exiting conditions**.* **[The]* Any new** fire escape shall be constructed and installed in accordance with **Uniform Construction Code*** Formal Technical Opinion No. FT0-3, dated March 1985.

i. All occupants shall have unobstructed access to the fire escape without having to pass through a room subject to locking.

ii. Access to a fire escape shall be through a door, except that window access shall be permitted **only when serving a single dwelling unit or guest room in Use Group R-1, R-2 and I-1 or]*** when serving spaces having a maximum occupant load of 10 **in other use groups]**.*

iii. (Reserved)*

(b) In buildings having only one exit, the single exit condition shall be permitted to continue as follows:

1. **(Reserved)***

2. In all buildings, in the story at the level of exit discharge when the occupant load of the story does not exceed 50 and the exit access travel distance does not exceed 75 feet;

i. Exception to 2 above: In buildings used as day nurseries two means of egress shall be required.*

3. **[In buildings of the use groups and characteristics specified in the following table.]* (Reserved)***

*[Table 5:18-4.11(b)3

BUILDINGS WITH ONE EXIT (a)*					
*[Use Group	Max height above grade	Max. size (b)	Max. exit access travel distance	Min. Fire-resistance rating of exit enclosure	Min. Fire-resistance rating of opening protection
R-2	2 stories	4 dwelling units per floor	50 ft.	1 hour	1 hour
B and S-2	2 stories	3,000 sq. ft. per floor	75 ft.	1 hour	1 hour]*

*[Note (a). Open parking structures where vehicles are mechanically parked are permitted to have a minimum of one exit.

Note (b). In community residences for the developmentally disabled, the maximum occupant load, excluding staff, shall be 12.]*

4.-6. (Reserved)

(c) (Reserved)*

*[(c)**(d)* All rooms and spaces having an occupant load greater than 50 or in which the travel distance exceeds 75 feet shall have a minimum of two egress doorways.

1. The following are exceptions to **[(c)**(d)*** above:

- i. Storage rooms having a maximum occupant load of 10;
- ii. Classrooms having a maximum occupant load of 75 in buildings equipped throughout with an automatic fire suppression system; **and***
- iii. In buildings of Use Group I-2, any patient sleeping room or suite of rooms greater than 1,000 square feet shall have a minimum of two egress doorways.

*[(d)**(e)* When buildings of Use Groups A-2 and A-3 have more than two individual rooms which can be used for separate functions and each room has an occupant load of more than 300, the required egress doors from such rooms shall lead directly outside or to an exit passageway.

1. Such passageways shall be completely enclosed by assemblies having a fire resistance rating of not less than two hours.

2. Such passageways shall not be used for any other purpose and shall lead directly outside.

*[(e)**(f)* The capacity of means of egress in each story shall be sufficient for the occupant load thereof.

1. Capacity per unit: The capacity per unit of egress width shall be computed in accordance with the following table for the specified use groups.

Table 5:18-4.11 **CAPACITY PER UNIT EGRESS WIDTH**

Use group	Without fire suppression system Number of occupants		With fire suppression system Number of occupants	
	Stairways	Doors, ramps and corridors	Stairways	Doors, ramps and corridors
A	75	100	113	150
*[B]	60	100	90	150
E	75	100	113	150
F	60	100	90	150
H	-	-	60	100
I-1	60	100	90	100]*
I-2	22	30	35	45
*[I-3]	60	100	90	150
M	60	100	90	150
R	75	100	113	150
S	60	100	90	150]*

2. Unit of egress width: The unit of egress width for all approved types of means of egress parts and facilities shall be 22 inches with a credit of one half unit for each 12 inches width in addition to one or more 22 inch units. Fractions of a unit of width less than 12 inches shall not be credited.

3. Maximum occupant load: The maximum permitted occupant load of a given space shall be limited to the smallest number determined by:

i. Computing the occupant load at the rate of one occupant per three square feet of available floor area that can be physically occupied by a person, or

ii. The smallest number of occupants for which exit capacity is provided based on the capacity per unit of egress width of the individual components of the means of egress.

*[(f)]***(g)* **(Reserved)***

*[(g)]***(h)* **[Corridors which serve more than one exit shall provide direct connection to such exits.]*** The length of a dead end corridor shall not exceed 35 feet.

1. The following are exceptions to *[(g)]***(h)* above:

i. The maximum length of a dead end corridor shall be 50 feet in buildings equipped throughout with an automatic fire alarm system installed in accordance with the New Jersey Uniform Construction Code.

ii. The maximum length of a dead end corridor shall be 70 feet in buildings equipped throughout with an automatic fire suppression system ***installed in accordance with the New Jersey Uniform Construction Code*.**

*[(h)]***(i)* All means of egress shall be provided with artificial illumination ***[and emergency lighting]*** as follows:

1. All means of egress ***[in other than buildings of Use Group R-3]*** shall be equipped with artificial lighting facilities to provide the intensity of illumination herein prescribed continuously during the time that conditions of occupancy of the building require that the exits be available.

[Lighting shall also be provided to illuminate the exit discharge in all buildings other than Use Groups F, H and S. In buildings of Use Group R-2, means of egress lighting, except that lighting within a dwelling unit, shall be wired on a circuit independent of circuits within any dwelling unit. The disconnecting means and overcurrent protection device shall not be located within a dwelling unit or such that access must be obtained by going through a dwelling unit.]

2. The intensity of floor lighting shall be not less than one foot candle.

3. In buildings of Use Groups A ***[and E]*** for the exhibition of motion pictures or other projections by means of directed light, the illumination of aisles may be reduced during such period of projection to not less than 0.2 foot candle.

i. The lighting of exits, aisles and auditoriums shall be controlled from a location inaccessible to unauthorized persons. Supplementary control shall also be provided in the motion picture projection room.

*[(4)]***(j)* Means of egress lighting shall be connected to an emergency electrical system to assure continued illumination for a duration of not less than one hour in case of ***[emergency of]*** primary power loss* **.*** ***[in the following buildings:**

i. In all buildings of Use Groups A, E and I;

ii. In all buildings of Use Group B containing more than 1,000 occupants;

iii. In all buildings of Use Group M when greater than 3,000 square feet in area on any floor, or when having one or more floors above or below grade floor;

iv. In buildings of Use Group R-1 containing more than 25 sleeping rooms;

v. In all buildings of Use Group R-2 containing more than 50 occupants;

vi. In all windowless buildings or portions thereof containing more than 100 occupants]*.

*[(i)]***(k)* In all buildings, rooms or spaces required to have more than one exit or exit access, all required means of egress shall be indicated with approved internally illuminated signs reading "Exit", visible from the exit access and, when necessary, supplemented by directional signs in the exit access indicating the direction and way of egress. All "Exit" signs shall be located at exit doors or exit access areas, so as to be readily visible.

1. ***(Reserved)***

2. "Exit" signs shall have red letters at least six inches high and the minimum width of each stroke shall be three-quarter inch on a white background or in other approved distinguishable colors. If an arrow is provided as part of an "Exit" sign, the construction shall be such that the arrow direction cannot be readily changed. The word "Exit" shall be clearly discernible when the internally illuminated sign is not energized.

3. Each sign shall be illuminated by a source providing not less than five foot candles at the illuminated surface.

i. Exception to 3 above: Approved self-luminous signs which provide evenly illuminated letters shall have a minimum luminance of 0.06 foot lamberts.

4. All "Exit" signs shall be illuminated at all times when the building is occupied. To assure continued illumination for a duration of not less than one hour in case of primary power loss, the "Exit" signs shall be connected to an emergency electrical system.

i. Exception to 4 above: Approved self-luminous signs which provide continuous illumination independent of external power sources need not be connected to an emergency electrical system.

*[(j)]***(l)* Means of egress doors shall conform to the following:

1. All egress doors serving an occupant load greater than 50 shall swing in the direction of exit travel;

2.-4. ***(Reserved)***

*[(k)]***(m)* Every required exit stairway having three or more risers and not provided with handrails or in which the existing handrails are ***[deficient or hazardous]*** ***judged to be in danger of collapsing when used under emergency exiting conditions,*** shall be provided with handrails for the full length of the run of steps on at least one side. ***[Handrails shall be provided on both sides of stairways having a width of 44 inches or more. Stairways more than 88 inches in required width shall have intermediate handrails dividing the stairway into portions not more than 88 inches wide.]*** ***All exit stairways more than 66 inches wide and subject to the maximum designed occupancy load shall have handrails on both sides. Where there are no handrails of where the existing handrails must be replaced in order to correct a hazardous condition, the handrails must be designed and installed in accordance with the provisions of the New Jersey Uniform Construction Code.***

*[1. Handrails shall be located not less than 30 inches nor more than 34 inches, measured vertically, above the nosing of the treads or above the finished floor of the landing for the horizontal portion of the handrail extension.

2. Handrails shall be firmly fastened and capable of bearing normally imposed loads.]*

*[(l)]***(n)* Every open portion of a stair, landing or balcony which is more than 30 inches above the floor or grade below ***and not provided with guards or those in which existing guards are judged to be in danger of collapsing when used under emergency exiting conditions,*** shall be provided with guards **.*** ***[designed and installed in accordance with the following provisions:]*** ***Where there are no guards or where existing guards must be replaced in order to correct a hazardous condition, the guards shall be designed and installed in accordance with the New Jersey Uniform Construction Code.***

*[1. The guards shall be at least 42 inches in height measured vertically above the leading edge of the tread or adjacent walking surface.

i. The following are exceptions to 1 above:

(1) Guards shall be not less than 30 inches in height above the leading edge of the tread along stairs which are not more than 20 feet in height or which reverse direction at an intermediate landing with 12 inches or less measured horizontally between successive flights.

(2) Guards in buildings of Use Group R-3 shall be not less than 36 inches in height.

2. Open guards shall have intermediate rails, balusters or other construction such that a sphere with a diameter of six inches cannot pass through any opening.

i. Exception to 2 above: In buildings of Use Groups F, H or S, the construction shall not permit a sphere with a diameter of 14 inches to pass through any opening.

3. Guards shall be firmly fastened and capable of bearing normally imposed loads.]*

(o) (Reserved)

5:18-4.12 Interior finish

(a) The interior finish of walls and ceilings shall have a flame spread rating not greater than the class prescribed by Table 5:18-4.12(a).

1. The following are exceptions to (a) above:

i. The use of vinyl or paper wall coverings not exceeding one-twenty-eighth of an inch in thickness which is applied directly to a noncombustible or fire retardant treated wood substrate shall not be regulated by this section.

ii. Interior trim which does not exceed 10 percent of the aggregate wall and ceiling area of any room or space shall not be regulated by this section.

iii. When an approved automatic fire suppression system is provided, interior finish of Class II or III materials shall be permitted where Class I or II materials, respectively, are required by this provision.

iv. Exposed portions of structural members complying with the requirements for ***[Type 4]* *heavy timber* construction *in accordance with the Uniform Construction Code*** shall not be regulated by this section.

Table 5:18-4.12(a)

Use Group	Interior Finish Requirements		
	Exit Enclosures	Exit Access Enclosures	Rooms or Spaces
A†, I	I	II	III
B, E, M, R-1, R-2	I	II	No Minimum

†See ***[5:19-4.13(a)2]* *5:19-4.16(a)2*** for amusement buildings.

(b) The classification of interior finishes referred to herein correspond to flame spread ratings determined by ASTM E84 as follows. Class I flame spread, 0-25; Class II flame spread, 26-75; Class III flame spread, 76-200. In all cases, the smoke developed rating determined by ASTM E84 shall not exceed 450.

(c) All existing interior finish materials which do not comply with the requirements of this section shall be removed or shall be treated with an approved fire retardant coating in accordance with the manufacturers instructions to secure compliance with the requirements of this section.

(d) (Reserved)

5:18-4.13 ***[Vertical opening protection]* *Protection of interior stairways and other vertical openings***

(a) All interior ***[exit]* stairways *and other vertical opening*** connecting more than six floor levels shall be enclosed with approved assemblies having a fire resistance rating of not less than two hours with approved opening protectives.

(a)(1)* *[(a)]* *[(b)] All interior ***[exit]* stairways *and other vertical openings*** connecting ***[not more than]* *four to* six floor levels** shall be enclosed with approved assemblies having a fire resistance rating of not less than one hour with approved opening protectives.

***(c) Interior stairways and other vertical openings connecting no more than three floor levels shall have protection as follows:**

1. In Use Group A, a minimum 30 minute fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three stories. Such fire barrier may be omitted;

i. When connecting the main floor and balcony in theaters and auditoriums; or

ii. When all the following conditions are met:

(1) The communicating area has a low hazard occupancy, or has a modern hazard occupancy which is protected throughout by an automatic suppression system; and

(2) The lowest or next to the lowest level is a street floor; and

(3) The entire area is open and unobstructed in a manner such that it may be assumed that a fire in any part of the interconnected spaces will be readily obvious to all of the occupants; and

(4) Exit capacity is sufficient to provide egress simultaneously for all the occupants of all levels by considering all areas to be a single floor area for the determination of required exit capacity; and

(5) Each floor level, considered separately, has at least one-half of its individual required exit capacity provided by an exit or exits leading directly out of that level without having to traverse another communicating floor level or be exposed to the smoke or fire spreading from another communicating floor level.*

2.-6. (Reserved)

7. In Use Group I-2, a minimum one-hour fire barrier shall be provided to protect all interior stairways and other vertical openings not exceeding three floor levels. Such fire barrier may be omitted when connecting not more than two floor levels, which are separated by a one-hour fire barrier equipped with self-closing or automatic-closing 20 minute door at the top or bottom of the stairway and when such stairway does not serve as a required means of egress.

8.-11. (Reserved)

***[(b) Exit enclosures shall not be required under the following conditions:**

1. In buildings of Use Group B as follows:

i. When connecting not more than two floor levels and less than 3,500 square feet per floor;

ii. When connecting not more than three floor levels and the building is equipped throughout with an automatic fire suppression system.

2. In buildings of Use Group E when connecting not more than two floor levels and the building is equipped throughout with an automatic fire suppression system;

3. In buildings of Use Groups F and S as follows:

i. When connecting not more than two floor levels; and
ii. When connecting not more than three floor levels and the building is equipped throughout with an automatic fire suppression system.

4. In buildings of Use Group I-I having an occupant load not exceeding 12, excluding staff, when connecting not more than two floor levels provided the floor levels are separated at the top or bottom of the stairway by not less than one hour fire resistance rated assemblies equipped with doors which are self-closing or automatic closing by smoke detection. Such doors shall be not less than one and three quarter inch solid core wood doors or labeled fire doors having a fire resistance rating of not less than 20 minutes.

5. In buildings of Use Group M as follows:

i. When connecting not more than two floor levels and less than 2,000 square feet per floor;

ii. When connecting not more than two floor levels and the building is equipped throughout with an automatic fire suppression system.

6. In buildings of Use Group R-1 when connecting not more than two floor levels and the building is equipped throughout with an automatic fire suppression system;

7. In buildings of Use Group R-2 as follows:

i. When connecting not more than two floor levels with not more than four dwelling units per floor and the building is equipped throughout with an automatic fire suppression system.

8. In all cases in buildings of Use Group R-3.]*

***[(c) All shafts and floor openings shall be enclosed the same as is provided for exits in (a) and (b) above:**

1. The following are exceptions to (c) above

i. An enclosure shall not be required for elevators, supplemental stairways or escalators when adjacent to and not separated from other floor openings which are permitted to be unenclosed and which connect the same floors served by the elevator, supplemental stairs or escalator.

ii. The exceptions in (b) above shall not apply to building service shafts such as laundry and trash chutes, utility shafts and duct shafts.]*

5:18-4.14 Information signs

(a) A sign shall be provided at each floor landing in all interior stairways more than three stories in height designating the floor level above the floor of discharge.

(b) All elevator lobby call stations on all floor levels shall be marked with approved signs reading, "Use Stairways in Case of Fire—Do not Use Elevators".

5:18-4.15 Smoke barriers

(a) Wherever smoke barriers are required by this subchapter, they shall be constructed in accordance with the following provisions:

***[(b)]* *1.* *[(Such)]* *Smoke* barriers shall have a fire resistance rating of not less than one-half hour and shall form an effective membrane continuous from outside wall to outside wall and from floor slab to floor or roof deck above, including continuity through all concealed spaces, such as those found suspended ceilings, and including interstitial structural and mechanical spaces. Transfer grilles, whether equipped with fusible link-operated dampers or not, shall not be used in these partitions. Wire glass panels not exceeding 1,296 square inches in approved steel frames may be used in smoke barriers.**

[1.]* *i.* Exception to ***[(a)]* *1. above: Smoke barriers are not required in interstitial spaces when such spaces are designed and constructed with ceilings that provide resistance to the passage of fire and smoke equivalent to that provided by smoke barrier.**

[(c)] ***2.*** Doors in smoke barrier shall have a fire-resistance rating of not less than 20 minutes when tested in accordance with ASTM E152 without the hose stream and labeled by an approved agency. Double egress corridor doors shall have vision panels of one-quarter inch thick labeled wired glass mounted in approved steel frames. Such panels may also be provided in other doors in smoke barriers. The glass area of the vision panels shall be limited to 1,296 square inches for each door. The doors shall close the openings with only the clearance necessary for proper operation under self-closing or automatic closing and shall be without undercuts, louvers or grilles. Rabbits or astragals are required at the meeting edges of double egress doors, and stops are required on the head and jams of all doors in smoke barriers. Positive latching devices are not required on double egress corridor doors, and center mullions are prohibited.

[1.] ***i.*** Exception to *[(c)]* ***2.*** above: Protection at the meeting edges of doors and stops at the head and sides of door frames may be omitted in buildings equipped with an approved engineered smoke control system. The engineered smoke control system shall respond automatically, preventing the transfer of smoke across the barrier.

[(d)] ***3.*** Doors in smoke barriers shall be self-closing or shall be provided with approved door hold-open devices of the fail-safe type which shall release the doors causing them to close upon the actuation of smoke detectors as well as upon the application of a maximum manual pull of 50 pounds against the hold-open device.

[(e)] ***4.*** An approved damper designed to resist the passage of smoke shall be provided at each point a duct penetrates a smoke barrier. The damper shall close upon detection of smoke by an approved smoke detector located within the duct.

[1. The following are exceptions to (e) above:]

i. In lieu of an approved smoke detector located within the duct, ducts which penetrate smoke barriers above smoke barrier doors are permitted to have the approved damper arranged to close upon detection of smoke by the local device designed to detect smoke on either side of the smoke barrier door opening.

ii. Dampers are not required in buildings equipped with an approved engineered smoke control system.

iii. Dampers are not required where the openings in ducts are limited to a single smoke compartment and the ducts are of steel construction.

[(a)] ***b)*** In buildings of Use Group 1-2, every story used for sleeping purposes for more than 30 occupants and stories which are usable but unoccupied shall be divided into not less than two compartments by smoke barrier walls such that each compartment does not exceed 22,500 square feet and no more than 150 feet in length and width.

5:18-4.16 Amusement buildings

(a) All buildings or portions thereof, of Use Group A-3 ***[in]*** which are designed to disorient ***[or amuse]*** the occupant, reduce vision, present barriers or otherwise impede the flow of traffic shall conform to all other applicable provisions of this Code and the following:

1. Every such amusement facility shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

2. The interior finish of all walls and ceilings shall in no case be less than a Class II material in accordance with N.J.A.C. 5:18-4.12(b) and (c).

3. Every such amusement facility shall be equipped with exit signs installed in accordance with N.J.A.C. 5:18-4.112*[(i)]* ***k)***

4. Every such amusement facility shall be equipped throughout with an approved automatic fire alarm system installed in accordance with the Uniform Construction Code and in accordance with 5 ***[and]* ***through***** 8 below.

5. The automatic alarm system shall activate a prerecorded message which can be clearly heard throughout the entire facility instructing the patrons to proceed to the nearest exit. Any alarm signs used in conjunction with the prerecorded message shall produce a signal which is distinctive from all sounds used in the normal operation of the amusement facility.

6. Every such amusement facility shall be equipped with emergency lighting equipment installed in accordance with the New Jersey Uniform Construction Code. The emergency lighting equipment shall automatically activate when:

- i. The fire suppression system is activated;
- ii. The fire alarm system is activated; or
- iii. Loss of the primary power supply occurs.

7. All audio and visual equipment such as horns, bells, flashing or otherwise distracting stimuli and mechanized displays shall cease operation upon initiation of an alarm by the automatic fire alarm system or upon activation of the automatic fire suppression system.

8. Activation of the automatic alarm system shall automatically shut down the air distribution system.

5:18-4.17 ***(Reserved)***

***5:18-4.18 Boiler/furnace equipment rooms**

(a) **Boiler/furnace equipment rooms shall be enclosed by one hour fire rated construction in the following facilities: day nurseries, children's shelter facilities, residential child care facilities and similar facilities with children below the age of 2-1/2 years, and which are classified as Use Group I-2 in accordance with the Uniform Construction Code.**

1. **Exception to (a) above: Furnace and boiler equipment of low pressure type (operating at pressures of 15 psig or less for steam equipment or 160 psig or less for hot water equipment) when installed in accordance with manufacturer recommendations or furnace and boiler equipment of residential (R-3) type (200,000 BTU per hour input rating or less) is not required to be enclosed.**

(b) **Emergency controls shall be provided as follows:**

1. **Emergency shutoff switches for furnaces and boilers in basements must be at the top of the stairs leading to the basement;**

2. **Emergency shutoff switches for furnaces and boilers in other enclosed rooms must be located outside of the room.***

(a)

Uniform Construction Code Annual Permits

Adopted Amendments: N.J.A.C. 5:23-2.14, 4.18 and 4.20

Proposed: October 21, 1985 at 17 N.J.R. 2490(a).

Adopted: May 15, 1986 by Leonard S. Coleman, Jr.,

Commissioner, Department of Community Affairs.

Filed: May 19, 1986 as R.1986 d.213, **with technical and**

substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: June 16, 1986.

Expiration Date: April 1, 1988.

Summary of Public Comments and Agency Responses:

Comment on this proposed amendment was received from only one corporation (AT&T). In response to the concerns raised by this corporation, the requirements for availability of a copy of the annual permit and of the work log have been modified to clarify where these documents must be maintained in cases where a company has multiple or unattended sites.

In response to the concerns raised about the quality of photographs produced to show work which was subsequently covered, it should be noted that the option of photographing work to be covered is offered so as not to delay work while waiting for the required inspection. A company which elects this option should endeavor to provide complete, good quality photographs of the covered work to avoid being requested to reopen the area.

The corporation offering comment also suggested that the EPA standards for work which will disturb asbestos be incorporated. These criteria are included in Subchapter 8 of the Uniform Construction Code and are incorporated here by reference.

A question was also raised as to modifications to stand-by generators which serve telecommunications equipment. Such modification work may be performed under the annual permit provided that the same generator does not serve required life safety equipment.

Finally, the corporation objected to the imposition of a \$100.00 training fee. While this fee is mandatory, it should be noted that the fee need not be paid until prior to the issuance of the annual permit. Therefore, if the permit is denied, the fee is not forfeited.

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

5:23-2.14 Construction permits: when required

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

(c) ***An annual*** ***[Additional]*** construction permit ***[s]*** may be issued by the construction official to education ***al***, industrial, institutional, mercantile, business and government facilities based upon submission of the following in duplicate:

1.-8. (No change.)

(d) (No change.)

(e) Conditions of the annual permit:

1. The "annual permit" may be issued for building/fire protection, electrical, or plumbing work or any combination of those classifications of work, providing that the individual responsible for work done under the annual permit possesses knowledge **as** **of** evidenced in accordance with N.J.A.C. 5:23-2.14(c)5, in the technical work classification for which the annual permit is sought.

i. An approved copy of the annual permit application shall be kept at **the** **a** facilities maintenance office **within the municipality having jurisdiction** for review by the Construction Official and appropriate subcode official. **The Construction Official shall be notified of the location of the facilities maintenance office.**

2.-4. (No change.)

5. A permanent work log, approved by the construction official, of all work done under the "annual permit" must be maintained at **the** **a** facilities maintenance office **on site or must be available at the time of the inspection upon 24 hours notice of such inspection**. The log must contain the date, a brief description of the work, photographs for any work which was not inspected prior to closing as set forth in 8 below, and the name of the person supervising the work. The log shall be retained for three years.

6. Architectural or engineering drawings, as required by law for work done under the annual permit, shall be prepared by a registered architect or licensed engineer as defined by the statutory requirements of the professional registration laws of this State and shall be kept permanently on file and be made available to the Construction Official and appropriate subcode official, for review upon request.

7. (No change.)

8. Work that is normally inspected prior to closing shall be ordered to be reopened by the facility upon written notice from the Construction Official or appropriate subcode official if he has reason to believe that a violation is present. A photograph shall be taken of any work intended to be enclosed without inspection.

9.-11. (No change.)

12. The following work is not permitted under an annual permit:

i.-vi. (No change.)

vii. Any modification work, other than routine maintenance, that affects life safety systems, such as, but not limited to:

- (1) Emergency lighting systems;
- (2) Smoke and heat detection systems;
- (3) Stand-by generator systems;
- (4) Emergency smoke evacuation systems.

viii. Any work which would disturb asbestos and require a permit to perform.

5:23-4.18 Standards for municipal fees

(a) General:

1.-3. (No change.)

4. The fee to be charged for an annual construction permit shall be charged annually. This fee shall be a flat fee based upon the number of maintenance workers employed by the facility and who are primarily engaged in work that is governed by a subcode. Managers, engineers and clericals shall not be considered maintenance workers for the purposes of establishing the annual construction permit fee. Annual permits may be issued for building/fire protection, electrical and plumbing. Annual permit fees shall be non-refundable.

5. Prior to the issuance of the annual permit, a training registration fee of \$100 per subcode shall be submitted by the applicant to the municipal construction official, who shall forward the fee to the Department of Community Affairs, Bureau of Construction Code Enforcement, Training Section along with copies of the construction permit (Form F-170). Checks shall be made payable to "Treasurer, State of New Jersey".

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

5:23-4.20 Department fees

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

(c) Department (enforcing agency) fees:

1.-11. (No change.)

12. Prior to the issuance of the annual permit, a training registration fee of \$100 per subcode shall be submitted by the applicant to the Department of Community Affairs, Bureau of Construction Code Enforcement, **T****raining** **S****ection** along with a copy of the construction permit (Form F-170). Checks shall be made payable to "Treasurer, State of New Jersey".

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Procedural Rules

Adopted New Rules: N.J.A.C. 5:91

Proposed: April 21, 1986 at 18 N.J.R. 821(a).

Adopted: May 22, 1986 by the Council on Affordable Housing, Arthur R. Kondrup, Chairman.

Filed: May 23, 1986 as R.1986 d.221, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-301, et seq., specifically, N.J.S.A. 52:27D-308.

Effective Date: June 16, 1986.

Expiration Date: June 16, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: The proposed rules refer both to the "promulgation" and "adoption" of substantive criteria and guidelines by the Council as the date which will trigger certain time periods in the procedural rules, notably the period within which a municipality must file its housing element. For purposes of consistency, the rules should refer to either the "promulgation" or "adoption" of the substantive rules, even though those terms may be considered to be equivalent.

RESPONSE: The Council agrees with this suggestion and has modified all references to the "adoption" of substantive rules to refer to the "promulgation" of those rules.

COMMENT: N.J.A.C. 5:91-3.2, regarding transferred cases, requires transferred municipalities to submit a housing element within five months from the date of transfer or promulgation of criteria and guidelines by the Council, whichever is later, but thereafter provides that all time periods will be calculated to commence from the date of transfer alone. The rules should provide that the time periods will run from the date of transfer or from the adoption of criteria and guidelines whichever is later.

RESPONSE: The published proposal erroneously omitted the phrase "or from the promulgation of substantive criteria and guidelines by the Council, whichever is later", from the final sentence of N.J.A.C. 5:91-3.2; the phrase has been added upon adoption as part of the rule.

COMMENT: The proposed rules provide that a municipality include within its housing element and fair share plan any proposed regional contribution agreement. The rules should also clarify that a municipality may negotiate or enter into such an agreement at any time, with the Council's approval, and not only upon receiving substantive certification.

RESPONSE: The Council agrees with the comment and has clarified N.J.A.C. 5:91-12.1 by adding a new subsection (d).

COMMENT: The Council should propose rules which define the responsibility of the mediator and outline the scope of mediation.

RESPONSE: Subchapter 7 of the procedural rules addresses the scope of mediation, provides for a review of the mediation process, and requires that the mediator submit a report and recommendation to the Council. Consequently, the scope of the mediation process is defined, and the Council has determined not to restrict the role of any designated mediator by regulation, but prefers to provide a wide range of latitude in the conduct of the mediation process. Moreover, the Council is advised that the Office of Administrative Law is promulgating rules and regulations to govern mediation which may be undertaken by that office; upon the promulgation of such rules the Council may incorporate the procedures contained therein or may in fact propose and adopt its own rules respecting the conduct of mediation as it may find necessary.

COMMENT: The proposed regulations provide that an interested party may participate in the administrative process before the Council, and may receive notice of submissions made by municipalities. Therefore, Subchapter 2 should provide that interested parties may request notice and copies of documents filed with the Council within two weeks of the effective date of the regulations, and that municipalities shall provide such notice within two weeks of a request therefor.

RESPONSE: Although the rule directs municipalities to provide notice to interested parties "at the time it files a resolution of participation or at the time these rules are adopted, whichever is later," the rule does not prohibit an interested party from making a request for such notice at

any time thereafter. Of course, the timeliness of any such requests may be a factor in the Council's consideration of any objections to a municipality's housing element and fair share plan. In any event, the rule simply establishes a time frame within which requests for notice should be made and does not preclude any party from making a request for such notice at any time during the administrative proceedings.

COMMENT: The filing of a municipal housing element and fair share plan should be considered a request for substantive certification in all cases, not just in transferred cases, as set forth in N.J.A.C. 5:91-3.2.

RESPONSE: The suggestion is contrary to Section 13 of the Fair Housing Act and cannot properly be included as a requirement of these rules.

COMMENT: Proposed N.J.A.C. 5:91-8.1(a) appears to give the Council some discretion in deciding whether to refer matters to the Office of Administrative Law. This would be inappropriate since Section 15 of the Fair Housing Act requires referral to the OAL whenever mediation is unsuccessful.

RESPONSE: Section 15 of the Fair Housing Act provides for the referral of cases to the Office of Administrative Law "as a contested case as defined in the Administrative Procedure Act;" thus, the Council must determine whether the matter is "contested," under the APA. Moreover, the Council may also exercise its discretion to hear the matter itself as the reviewing agency.

COMMENT: With regard to the right to file motions, set forth in Subchapter 13, who has the right to file a motion with the Council? Who must be served with the notice of motion? How will the Council decide a motion?

RESPONSE: Motions will be considered on a case by case basis; the Council will conduct itself in a manner similar to that of a court of law and will require all parties to demonstrate standing and that all interested persons or individuals which may be affected by the relief requested have been notified of the motion and given an opportunity to be heard. The Council will decide all motions by a majority vote.

COMMENT: The proposed regulations do not create any kind of priority system among municipal applications; transferred cases should have some kind of priority.

RESPONSE: The Council will implement a system for the administration of cases upon initial review of the matters which come before it, and will devise a means to address all cases in an expeditious fashion.

Summary of Changes:

The rules as adopted by the Council was modified, as reflected above, to clarify that a municipality may enter into or negotiate a regional contribution agreement at any time, not just when the municipality has petitioned for certification of its housing element. Lastly, the rules as adopted include a descriptive heading within certain subparagraphs to further clarify the scope of the rule.

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

CHAPTER 91 PROCEDURAL RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

SUBCHAPTER 1. GENERAL PROVISIONS

5:91-1.1 Short title

The provisions of this chapter shall be known as "the procedural rules of the New Jersey Council on Affordable Housing."

5:91-1.2 Definitions

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

"Act" means the Fair Housing Act of 1985, L. 1985, c. 222, (C. 52:27D-301, et seq.).

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by L. 1983, c. 530 (C. 55:14K-1 et seq.).

"Council" means the New Jersey Council on Affordable Housing established under the Act, and which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State.

"Fair Share Plan" means that plan or proposal, which is in a form that may readily be converted into an ordinance, by which a municipality proposes to satisfy its obligation to create a realistic opportunity to meet the low and moderate income housing needs of its region, and which details the affirmative measures the municipality proposes to undertake

to achieve its fair share of low and moderate income housing, as provided in sections 9 and 14 of the Act, and as further described and defined in N.J.A.C. ***5:92*** ***[(substantive rules)]***.

"Filed" means accepted for filing by the Council.

"Housing element" means that portion of a municipality's master plan, consisting of reports, statements, proposals, maps, diagrams and text, designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low and moderate income housing, as further described and defined by N.J.A.C. ***5:92*** ***[(substantive rules)]***.

"Housing region" means a geographic area, determined by the Council, of no less than two nor more than four contiguous, whole 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 prior to July 2, 1985.

"Petition for Substantive Certification" means that petition which a municipality files, or is deemed to have filed, which engages the Council's mediation and review process.

"Receiving municipality" means, for purposes of a regional contribution agreement (RCA), a municipality which agrees to assume a portion of another municipality's fair share obligation.

"Sending municipality" means, for purposes of a regional contribution agreement (RCA), a municipality which seeks to transfer a portion of its fair share obligation to another willing municipality.

SUBCHAPTER 2. RESOLUTIONS OF PARTICIPATION

5:91-2.1 Form

(a) ***General:** A resolution of participation shall express the intention of the municipality to participate in the administrative procedures outlined in the Act and in these rules and shall contain such information and be in such form as the Council may from time to time prescribe.

(b) ***Notice:** At the time it files a resolution of participation, or at the time these rules are adopted, which ever is later, each participating municipality shall provide notice that it has submitted such a resolution to any interested party which has requested to receive such notice.

(c) ***Filed:** A resolution of participation will be filed upon receipt by the Council.

5:91-2.2 Action equivalent to a resolution of participation

A municipality in an exclusionary zoning lawsuit transferred to the Council by the courts shall be considered to have filed a resolution of participation as of the date of the transfer.

SUBCHAPTER 3. HOUSING ELEMENT AND FAIR SHARE PLAN

5:91-3.1 Development of housing element

(a) ***General:** A municipality which files a resolution of participation within four months after the effective date of the Act shall, within five months after the Council's ***[adoption]*** ***promulgation*** of its substantive criteria and guidelines, prepare and file with the Council a housing element and any fair share housing ordinance introduced and given first reading and second reading in a hearing pursuant to N.J.S.A. 40:49-2 which implements the housing element.

(b) ***Letter of Intent:** A municipality which files a resolution of participation under this subchapter shall, within 30 days after the Council's ***[adoption]*** ***promulgation*** of its substantive criteria and guidelines, file with the Council, and serve upon any interested party which has so requested, a letter or report, in such form as the Council may from time to time determine, which contains, at a minimum, the following items:

1. The municipality's calculations of its fair share of its region's present and prospective need, as determined by a formula or methodology established by the Council; and

2. A statement of those specific adjustments to the calculation set forth in Section 7 of the Act, which the municipality intends to rely upon to alter the initial calculation, and the general reasons therefor; and

3. A proposed schedule for the preparation of a draft housing element and fair share plan, together with a description of all expert reports or studies upon which the municipality intends to rely in support of any proposed adjustments and a proposed schedule for the submission of such expert reports or studies; and

4. A description of all efforts the municipality has undertaken to provide notice to interested parties and the public that it has engaged the administrative procedures of the Act and will propose a housing element and fair share plan for the Council's review.

(c) ***Objectors:*** Within 15 days of receipt of a municipality's letter of intent, any interested party or potential objector shall file with the Council a statement of those portions of the report to which it objects, and shall state the reasons therefor.

(d) ***Draft Housing Element and Fair Share Plan:*** A municipality which files a resolution of participation under this subchapter shall, within three months after the Council's ***[adoption]* *promulgation*** of its substantive criteria and guidelines, file with the Council, and serve upon any interested party which has so requested, a draft housing element and fair share plan, which addresses in detail those items and factors identified in the municipality's letter of intent. The draft report shall be in a form as the Council may from time to time determine and shall include at least the following:

1. A statement of those factors set forth in Section 7 of the Act upon which the municipality will rely to adjust its calculated fair share of its region's present and prospective need for low and moderate income housing; and

2. A description and explanation of the expert reports and studies upon which the municipality relies and which supports its request for such adjustments; and

3. A copy of all such expert reports and studies or a status report of all such documents; and

4. Documentation of all efforts at premediation with interested parties and objectors, as well as any premediation conferences with Council staff, as well as documentation of any and all public hearings held in the development of a draft housing element and fair share plan.

(e) ***Objectors:*** Within 15 days after receipt of a municipality's draft housing element and fair share plan, any interested party or potential objector which disputes any findings or statements contained in the draft shall notify the Council and the participating municipality of its objections and a summary of the reasons therefor. Any interested party or potential objector shall also document all efforts at premediation with the participating municipality, including any participation at public hearings conducted by the municipality regarding the draft housing element and fair share plan.

(f) ***Housing Element and Fair Share Plan:*** A municipality which files a resolution of participation under this subchapter shall, within five months after the Council's ***[adoption]* *promulgation*** of its substantive criteria and guidelines, file with the Council and serve upon any interested party which has so requested, the municipality's proposed housing element and fair share plan, as well as any fair share housing ordinance introduced and given first reading and second reading in a hearing pursuant to N.J.S.A. 40:49-2 which implements the housing element. The proposed housing element and fair share plan shall be in a form determined by the Council and shall include at least the following:

1. A complete description of the municipality's calculation of its fair share of its region's present and prospective need for low and moderate income housing, pursuant to a methodology or formula determined by the Council; and

2. A complete and final statement of any and all adjustments, set forth in Section 7 of the Act, which the municipality relies upon in its calculation, as well as a summary of all support documentation, expert reports, studies and technical data; and

3. Copies of all such expert reports, studies or technical data; and

4. A response to objections to the municipality's draft housing element and fair share plan; and

5. Documentation of all efforts at premediation with potential objectors or interested parties, all efforts at premediation conferences with the Council, and all public hearings undertaken in the development of the municipality's proposed housing element and fair share plan.

5:91-3.2 Transferred cases

A municipality in an exclusionary zoning lawsuit transferred to the Council by the courts pursuant to section 16 of the Act, shall within five months from the date of transfer or promulgation of substantive criteria and guidelines by the Council, whichever is later, prepare and file with the Council a housing element and fair share plan. Any such municipality shall adhere to the procedures and time constraints specified in N.J.A.C. 5:91-3.1; all time periods set forth therein shall be calculated to commence from the date of transfer*, or from the promulgation of substantive criteria and guidelines by the Council, whichever is later*.

5:91-3.3 Dismissal

In the event that a municipality fails to timely submit its housing element and fair share plan, or undertake those actions required pursuant to N.J.A.C. 5:91-3.1, the Council shall no longer retain jurisdiction and shall dismiss the matter.

5:91-3.4 Municipality which does not file ***a*** resolution ***of participation*** and is not in an exclusionary zoning lawsuit

A municipality which does not file a resolution of participation within four months after the effective date of the Act, and which is not in an exclusionary zoning lawsuit, may do so at any time thereafter. Upon filing a resolution of participation, the municipality shall request the Council to establish a schedule for the submission of the municipality's housing element and fair share plan, and any proposed regional contribution agreement.

SUBCHAPTER 4. PETITIONS FOR SUBSTANTIVE CERTIFICATION

5:91-4.1 Petition

(a) A petition for substantive certification shall be in such form and shall contain such information as the Council may from time to time determine.

(b) A municipality may, at any time within six years after it has filed a housing element and fair share plan with the Council, petition for substantive certification.

5:91-4.2 Action equivalent to a petition for substantive certification

A municipality in any exclusionary zoning lawsuit transferred to the Council by the courts shall be deemed to have filed a petition for substantive certification upon the timely submission of the municipality's housing element and fair share plan as required pursuant to N.J.A.C. 5:91-3.2.

5:91-4.3 Notice

(a) A municipality which has filed a petition for substantive certification, or is deemed to have so filed, shall publish notice of this petition in a newspaper of general circulation within the municipality and the county.

(b) The Council shall publish an updated list of all petitions for substantive certification it has received monthly in newspapers of general circulation within the State.

5:91-4.4 Inspection

A municipality which has filed a petition for substantive certification and proposed housing element and fair share plan with the Council shall make available for public inspection within the municipality, during business hours, copies of the proposal and supporting documentation, and shall include in its notice made pursuant to N.J.A.C. 5:91-4.3 the times, and places within the municipality at which the proposal will be made available for public inspection.

SUBCHAPTER 5. OBJECTIONS TO A PROPOSED HOUSING ELEMENT AND FAIR SHARE PLAN

5:91-5.1 Objection

(a) ***General:*** Within 45 days of publication of the notice of a municipality's petition for substantive certification, any person shall file objections with the Council. These objections shall be in a form as may be determined by the Council and shall include at least:

1. A statement as to each and every aspect of the municipality's proposed final housing element and fair share plan with which the person disputes; and

2. An explanation of the basis for each and every such dispute or objection, including, where appropriate, citations to expert reports, studies, or other data relied upon; and

3. Copies of all such expert reports, studies and data relied upon; and

4. Proposed modifications, changes, or other measures which will resolve the objection or dispute consistent with the Council's criteria and guidelines; and

5. A statement documenting all efforts at premediation, participation in conferences, or public hearings and a summary of the results of any such efforts.

(b) ***Completeness:*** An objection shall constitute as completely as possible a full statement of all issues, or matters contained in the proposed housing element and fair share plan, with which the objector is in dispute.

SUBCHAPTER 6. CONSIDERATION OF A MUNICIPALITY'S HOUSING ELEMENT AND FAIR SHARE PLAN WHERE NO OBJECTIONS ARE FILED

5:91-6.1 Council review

(a) ***General:*** Unless an objection to a municipality's proposed housing element and fair share plan is filed within 45 days of the publication of the notice of the municipality's petition for substantive certification, the Council shall review the petition and shall issue substantive certification if it shall find that:

1. The municipality's proposed housing element and fair share plan is consistent with the rules and criteria adopted by the Council and is not inconsistent with achievement of the low and moderate income housing needs of the region as adjusted pursuant to the Council's criteria and guidelines; and

2. The combination of the elimination of unnecessary housing cost generating features from the municipal land use ordinances and regulations, and the affirmative measures in the final proposed housing element and fair share plan make the achievement of the municipality's fair share of low and moderate income housing realistically possible after allowing for the implementation of any regional contribution agreement approved by the Council.

5:91-6.2 Conference

In conducting its review of a petition for substantive certification the Council may meet with the municipality.

5:91-6.3 Grant, denial or conditional denial of substantive certification

(a) Upon a review of a petition for substantive certification the Council may grant the petition, deny the petition, or condition its denial of certification upon changes in the municipality's proposed housing element or fair share plan. Any such denial or conditions for approval shall be in writing and shall set forth the reasons for the denial or the imposition of conditions.

(b) If, within 60 days of the Council's denial or conditional denial of a petition for substantive certification, the municipality refiles its petition with changes satisfactory to the Council, the Council shall issue substantive certification.

(c) Within 45 days after the Council has granted substantive certification the municipality shall adopt its fair share housing ordinance as approved by the Council.

SUBCHAPTER 7. MEDIATION

5:91-7.1 General

(a) The Council shall engage in mediation where a timely objection to a municipality's petition for substantive certification is filed. The Council may appoint a designee to conduct mediation, and the Council or its designee shall meet with the representatives of the municipality and the objectors and attempt to mediate a resolution of the dispute.

5:91-7.2 Scope of mediation

(a) Within 10 days after a matter is referred to the Council for mediation, the Council, or its designee, shall meet with representatives of the municipality and the objector and shall establish a schedule for mediation.

(b) The Council or its designee shall meet with the municipality and the objectors as often as the Council or its designee shall determine necessary and may impose such deadlines for the submission of information, reports, studies or other documentation as the Council or its designee shall find necessary.

(c) The Council or its *[mediator]* *designee* may, upon notice to the parties, during the course of any mediation, rely upon or use any interim adjudications previously entered by a trial court in the matter, or any stipulations previously entered into by the parties in any such litigation.

(d) The Council may during the mediation, determine to review itself or to refer to the Office of Administrative Law any issue which may facilitate a satisfactory conclusion to the mediation process. This review shall be conducted as an adjudication complying with all applicable due process requirements.

(e) Mediation before the Council or its designated mediator may be conducted for a period of not more than 60 days after the time for the receipt of objections to a petition for substantive certification has expired. If the Council is dissatisfied with the progress of the mediation proceedings, or determines that the parties have reached an impasse, and that mediation could not resolve the dispute, the Council may declare an end to the mediation process and refer the matter to the Office of Administrative Law for adjudication as a contested case as provided in N.J.A.C. 5:91-8. The period for mediation established in this section may be extended by the Council for good cause shown.

5:91-7.3 Review of mediation

(a) Before the conclusion of the 60-day mediation period, if such mediation was conducted by a mediator designated by the Council, the mediator shall prepare a report and recommendation to the Council, detailing the following factors:

1. The progress of the mediation proceedings; and
2. The issues in dispute between the parties; and
3. The stipulations or other agreements between the parties; and

4. A recommendation that the Council either grant, deny, or conditionally deny substantive certification, and the reasons therefor, or a recommendation that the matter be referred to the Office of Administrative Law for adjudication as a contested case.

(b) The Council shall determine whether to grant, deny or conditionally deny substantive certification, or to refer the matter to the Office of Administrative Law for adjudication as a contested case.

(c) If the matter is referred to the Office of Administrative Law, the parties shall be bound by any agreements entered into during the mediation.

SUBCHAPTER 8. REFERRAL TO OFFICE OF ADMINISTRATIVE LAW (OAL)

5:91-8.1 General

(a) In the event mediation efforts are unsuccessful the Council shall determine whether to refer the matter to the Office of Administrative Law (OAL) for resolution as a contested case. Upon determining that the matter shall be referred to the Office of Administrative Law for adjudication as a contested case, the Council shall transmit the matter to the OAL together with the mediation report, the result of any adjudication under N.J.A.C. 5:91-7.2(d), the municipality's petition for substantive certification and any objections thereto.

(b) The Office of Administrative Law shall expedite its hearing process as much as practicable in accordance with N.J.S.A. 52:27D-315(c).

(c) A written transcript of all oral testimony and copies of all exhibits introduced into evidence shall be submitted to the Council by the Office of Administrative Law simultaneously with a copy of the initial decision. The costs of the transcript shall be shared equally by the municipality and the objectors.

SUBCHAPTER 9. COUNCIL'S REVIEW OF THE INITIAL DECISION

5:91-9.1 Review

Within 45 days after the issuance of an initial decision from the Office of Administrative Law, the Council shall, upon review of the record submitted by the Administrative Law Judge, adopt, reject or modify the recommended report and decision. Unless the Council modifies or rejects the initial decision within this period of time, the decision of the Administrative Law Judge shall be deemed adopted. For good cause shown, upon certification by the Director of the Office of Administrative Law and the Council, the time limit established under this subchapter may be extended pursuant to N.J.A.C. 1:1-16.6.

SUBCHAPTER 10. GRANT, DENIAL OR CONDITIONAL DENIAL OF SUBSTANTIVE CERTIFICATION

5:91-10.1 Substantive certification

(a) Substantive certification, shall be issued if:

1. The municipality's proposed housing element and fair share plan is consistent with the rules and criteria adopted by the Council and not inconsistent with the obligation to create a realistic opportunity to meet the low and moderate income housing needs of its region as adjusted pursuant to the Council's criteria and guidelines; and

2. The combination of, the elimination of unnecessary housing cost generating features from the municipal land use ordinances and regulations, and, affirmative measures in the housing element and fair share plan make the achievement of the municipality's fair share of low and moderate income housing realistically possible after allowing for the implementation of any regional contribution agreement approved by the Council.

(b) Upon conducting the review set forth in (a) above, the Council may deny the petition for substantive certification, or condition a grant of substantive certification upon specific changes in the housing element or fair share plan. Any denial or conditions for approval shall be in writing and shall set forth the reasons for the denial or conditions. If, within 60 days of the Council's denial or conditional denial, the municipality refiles its petition with changes satisfactory to the Council, the Council shall issue substantive certification.

(c) In conducting its review set forth in this section, the Council may meet with the municipality and any objector thereto.

(d) Within 45 days of the grant of substantive certification, the municipality shall adopt its fair share housing ordinance as approved by the Council. The Council's grant of certification will be void and of no force and effect in the event that any municipality fails to timely adopt its fair share ordinance.

SUBCHAPTER 11. GENERAL POWERS

5:91-11.1 Restraining Orders

At any time, upon its own determination, or upon the application of any interested party, and after a hearing and opportunity to be heard, the Council may issue such orders as may be necessary to require that a participating municipality take appropriate measures to preserve scarce resources that may be essential to the satisfaction of the municipality's obligation to provide for its fair share of its region's present and prospective need for low and moderate income housing.

5:91-11.2 Accelerated denial of substantive certification

At any time, upon its own determination, or upon the application of any interested party, and after a hearing and opportunity to be heard, the Council may deny substantive certification without proceeding further with the mediation and review process.

SUBCHAPTER 12. REGIONAL CONTRIBUTION AGREEMENTS (RCAs)

5:91-12.1 Terms of agreement

(a) ***General:** A municipality may propose to transfer up to 50 percent of its fair share to another municipality within its housing region by means of a contractual agreement into which two municipalities voluntarily enter. A sending municipality which is required to submit its housing element and fair share plan within five months, as provided in N.J.A.C. 5:91-3.1, shall include in its letter of intent and draft housing element and fair share plan the following:

1. ***Letter of Intent:** A sending municipality which proposes to transfer a portion of its fair share to another receiving municipality shall include within its letter of intent:

- i. A statement of reasons for the proposed regional contribution agreement; and
- ii. A summary of the proposed agreement, including an estimation of the number of units to be transferred, and an explanation or description of any proposed compensation for the acceptance of such units by a receiving municipality; and

2. **Draft Housing Element and Fair Share Plan:** A sending municipality shall include within its draft report a detailed statement of the terms and conditions of a proposed regional contribution agreement which shall include specific information regarding the factors enumerated in 1. above, and which shall further specify the range of costs associated with such a proposed agreement and the source of any funds or resources upon which the sending municipality will rely. The draft shall also contain an alternative plan by which the municipality will achieve its fair share in the event the municipality fails to enter into its proposed regional contribution agreement.

(b) ***Housing Element and Fair Share Plan:** A municipality which proposes to enter into a regional contribution agreement shall include within its proposed housing element and fair share plan a statement of the terms and conditions of any proposed agreement, including:

1. The number of units to be transferred; and
2. The amount of compensation to be paid in return for such a transfer, the nature of such compensation, and the source of such compensation; and
3. A draft or final form of contract which includes all terms and conditions of the regional contribution agreement; and
4. A memorandum of understanding with a receiving municipality that such receiving municipality will enter into the proposed regional contribution agreement with the sending municipality and will execute an agreement substantially embodying the terms and conditions set forth above, and which includes a schedule for the submission of a project plan by the receiving municipality to the Agency for review, as set forth in section 12(e) of the Act.

(c) A regional contribution agreement, the substance of which has been approved by the Council in granting a petition for substantive certification, may be entered into upon the Council awarding substantive certification or thereafter.

(d) Nothing in this subchapter shall be construed to prohibit any municipality from negotiating or proposing to enter into a regional contribution agreement at any time.

5:91-12.2 Review by county planning boards or agencies

(a) Regional contribution agreements shall be reviewed by the county planning board or agency of the county in which the receiving municipality is located. The county planning board or agency shall consider whether or not the transfer agreement is in accordance with sound comprehensive regional planning, in accordance with the terms of the master

plan and zoning ordinance of both sending and receiving municipalities, its own county master plan, and the State Development and Redevelopment Plan (SDRP) or State Development Guide Plan (SDGP) if the SDRP is not completed.

1. In the event that there is no county planning board or agency in the county in which the receiving municipality is located, the Council shall determine whether or not the agreement is in accordance with sound comprehensive regional planning.

(b) All determinations of a county planning board or agency shall be in writing and shall be made within such time limits as the Council may prescribe, beyond which the Council shall make those determinations. No fee shall be paid to the county planning board or agency for its review pursuant to this subsection.

5:91-12.3 Review by the Council

(a) Upon review of a proposed regional contribution agreement, by the county planning board or agency in which the receiving municipality is located, and which has been approved in substance by the Council in granting substantive certification of a municipality's petition, the Council shall determine whether or not the proposed agreement creates a realistic opportunity for the provision of low and moderate income housing, within convenient access to employment opportunities, as set forth in the municipality's petition.

(b) Upon the recommendation of the Agency, the Council may approve as part of the regional contribution agreement a provision that the time limitations for contractual guarantees or resale controls for low and moderate income units included in the proposed project be for less than 30 years if the Agency determines that modification is necessary to assure the economic viability of the project.

(c) The Council shall approve a proposed regional contribution agreement upon a finding that:

1. The agreement provides a realistic opportunity for low and moderate income housing within convenient access to employment opportunities; and
2. That the agreement is consistent with sound comprehensive regional planning; and
3. That the receiving municipality's project plan is a feasible and viable means of achieving the purposes of the agreement, as determined by the Agency.

(d) The Council shall approve all regional contribution agreements by resolution; the Council shall set forth in its resolution a schedule of the contributions to be appropriated annually by the sending municipality. A copy of the adopted resolution shall be filed promptly with the Division of Local Government Services in the Department of Community Affairs and the Director shall thereafter not approve an annual budget of a sending municipality if it does not include appropriations necessary to meet the terms of the resolution.

5:91-12.4 Receiving municipalities

(a) ***Statements of intent:** Municipalities which may intend to enter into a regional contribution agreement as a receiving municipality shall notify the Council of their interest and of any proposed conditions or requirements for their participation.

1. Statements of intent submitted under this section shall be in the form of a resolution adopted by the municipality.
2. Statements of intent filed with the Council pursuant to this section shall not preclude any receiving municipality from negotiating with any potential sending municipality.

3. No receiving municipality shall be required to accept a greater number of low and moderate income units through an agreement than it has expressed a willingness to accept in its statement, but the number stated shall not be less than a reasonable minimal number of units, as determined by the Council, not to exceed 100.

(b) ***Memorandum of understanding:** A municipality which intends to enter into a regional contribution agreement as a receiving municipality shall, before a sending municipality submits its proposed housing element and fair share plan to the Council, enter into a memorandum ***[or]*** ***of*** understanding with the sending municipality which:

1. Outlines the terms and conditions of the proposed regional contribution agreement; and
2. Includes a schedule of when the project plan will be submitted to the Agency for review as required by (c), below.

(c) ***Project Plan:** A receiving municipality shall submit a proposed project plan, which shall be in such form and contain such information as the Agency may require, to the Agency pursuant to the schedule contained in the municipality's memorandum of understanding with the

sending municipality. The Council or the Agency may impose time limitations for the submission of a project plan, or any updates or additions thereto.

(d) ***Feasibility review by the Agency:*** The Agency may undertake such review as is necessary, including scheduling meetings or hearings and requiring further information, studies or reports, in order to render a timely feasibility analysis of a proposed project for the Council's review. Failure of the receiving municipality to promptly or properly comply with the requirements of the Agency may result in the Agency's refusal to certify the feasibility of the proposed project.

5:91-12.5 Enforcement of a regional contribution agreement

The Council shall take such actions as may be necessary to enforce a regional contribution agreement.

SUBCHAPTER 13. MOTIONS

5:91-13.1 Form of motion

An application to the Council for an order shall be by motion. A motion shall be by notice of motion in writing, unless the Council permits it to be made orally. Every motion shall state the time and place when it is to be presented to the Council, the grounds upon which it is made, the nature of the relief sought, and shall be accompanied by a proposed form of order. When a matter becomes a contested case, motions shall be pursuant to N.J.A.C. 1:1-9.

5:91-13.2 Oral argument

A movant's request for oral argument shall be made either in his moving papers or reply. A respondent's request for oral argument shall be made in his answering papers. All requests for oral argument shall state the reasons therefor*[e]*.

5:91-13.3 Affidavits, briefs and supporting statements

Motions and answering papers shall be accompanied by all necessary supporting affidavits and briefs or supporting statements. All motions and answering papers shall be supported by affidavits for facts relied upon which are not of record or which are not the subject of official notice. Such affidavits shall set forth only facts to which the affiants are competent to testify. Properly verified copies of all papers or parts of papers referred to in such affidavits may be annexed thereto.

5:91-13.4 Time for serving and filing motions and affidavits or briefs

A notice of motion shall be served and filed not later than 20 days before the time specified for the return date unless otherwise ordered by the Council. If a motion is supported by affidavit or brief, the affidavit or brief shall be served and filed with the motion. Any opposing affidavits or briefs, or any cross-motions, shall be served and filed not later than 10 days before the return date. Answers or responses to any opposing affidavits or briefs, or to any cross-motions, shall be served and filed not later than five days before the return date unless the Council otherwise orders.

5:91-13.5 Orders

The Council shall render a decision on the motion by issuing the proposed order filed with the motion or by instructing the prevailing party to prepare and submit an appropriate order. If the Council has made findings of fact and conclusions of law explaining its disposition of the motion, the order shall so indicate.

ENVIRONMENTAL PROTECTION

(a)

OFFICE OF THE COMMISSIONER

Hazardous Substance Discharges: Reports and Notices

Adopted New Rule: N.J.A.C. 7:1-7

Proposed: August 5, 1985 at 17 N.J.R. 1826(a).

Adopted: May 22, 1986 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Filed: May 23, 1986 as R.1986 d.229, **with technical and substantive changes** not requiring additional public notice or comment (N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1K-15 et seq. (P.L. 1984, c.210).

Effective Date: June 16, 1986.

Expiration date: September 16, 1990.

DEP Docket No. 037-85-06.

Summary of Public Comments and Agency Responses:

On August 5, 1985 the New Jersey Department of Environmental Protection ("NJDEP" or "Department") proposed a new rule to implement the provisions of N.J.S.A. 13:1K-15 et seq. (P.L. 1984, c. 210), commonly known as the "Hazardous Substance Discharge—Reports and Notices Act" ("Act"). NJDEP held open a public comment period for written comments until September 4, 1985. Four written comments and one oral comment by telephone were received on the proposed new rule during the public comment period.

The Department's changes to the rules upon adoption consist of clarification of text and format. For example, N.J.A.C. 7:1-7.5(b) 9 has been revised pursuant to several comments informing NJDEP that the submittal of a Discharge Prevention Containment and Countermeasure Plan ("DPCC") for a company should not be required unless a DPCC plan has not been previously submitted to the Department. NJDEP has clarified the various reporting requirements for all interested parties at N.J.A.C. 7:1-7.5, 7.7 and 7.8. Also, the telephone number and mailing address for NJDEP's Field Operations, Compliance and Enforcement in Yardville, New Jersey has been updated in N.J.A.C. 7:1-7.4 and 7.5(c) and (d). NJDEP summarizes and responds to the comments received and explains the revisions upon adoption to N.J.A.C. 7:1-7 as follows:

COMMENT: One commenter felt that the definition of an industrial establishment was too broad and requested clarification of the exemption process for industrial establishments detailed in N.J.A.C. 7:1-7.9(c). This commenter felt that the definition of an industrial establishment should be limited to only those locations where employees are stationed during normal working hours.

RESPONSE: The regulatory definition of "industrial establishment" at N.J.A.C. 7:1-3 is identical to the statutory definition at N.J.S.A. 13:1K-15(c). The Department does not have the authority to either limit or expand the scope of the definition of industrial establishment inconsistent with the provisions of the Act. However, N.J.A.C. 7:1-7.9, titled "Procedure for Inclusions or Exemption of Groups Within SIC Codes from the Definition of an Industrial Establishment," does provide at N.J.A.C. 7:1-7.9(c) through (g) a process for exempting Standard Industrial Classification ("SIC") codes from the scope of the definition of industrial establishments. The Department believes that the exemption process at N.J.A.C. 7:1-7.9 does not require any further clarification. Interested parties should prepare an SIC exemption request, including all appropriate documentation, evidence and other proofs available, for submission to the Department at the address specified in the "General Program Information" section at N.J.A.C. 7:1-7.4.

COMMENT: Most commenters questioned the definition of a reportable hazardous discharge and suggested the inclusion of de minimis requirements.

RESPONSE: The statutory definition of "hazardous discharge" specified in the Act has been incorporated into N.J.A.C. 7:1-7.3. Both the Act and N.J.A.C. 7:1-7 derive a definition of "hazardous discharge" from any discharge required to be reported pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. ("Spill Act"), and any regulations promulgated thereto but not reported to NJDEP prior to the Act's December 10, 1984 effective date. N.J.S.A. 58:10-23.11b(h) defines "discharge" broadly without de minimis criteria except the requirements that said discharge may result in damages to the lands, waters or natural resource of New Jersey. A "reportable discharge" for Spill Act purposes pursuant to N.J.A.C. 7:1E-2.1(a) is "any discharge of a hazardous substance which is in such quantity or concentration as may be harmful or which poses a foreseeable risk of harm to public health or welfare, or to natural resources". The Department cannot unilaterally change the definition of hazardous discharge, including the addition of de minimis criteria, without appropriate statutory amendments to the Spill Act. The lack of de minimis criteria for hazardous discharges in both the Act and the Spill Act reflect the reality that even small quantities of certain hazardous contaminants can pose a substantial risk to the public health, safety and environment.

COMMENT: Several commenters felt that the reporting process of N.J.A.C. 7:1-7 was cumbersome and duplicative. These commenters feel that the information requested under the Act and N.J.A.C. 7:1-7 is already required to be submitted under the Spill Act and Spill Act Regulations, N.J.A.C. 7:1E.

RESPONSE: The Department recognizes that the Act and the Spill Act cover the same universe of hazardous discharges. The purpose of this Act and N.J.A.C. 7:1-7 is not to create duplicative hazardous discharge reporting requirements. The Act and N.J.A.C. 7:1-7 were created to enhance the communications between the industrial community, local officials and NJDEP regarding hazardous discharges. The Department

has attempted to design a reporting system in N.J.A.C. 7:1-7 which complements the Spill Act within the framework of the Act. NJDEP's preparation of a hazardous discharge report form should provide industrial establishments and municipalities with a relatively easy method of compliance with the reporting requirements of the Act and N.J.A.C. 7:1-7 in addition to any other reporting requirements pursuant to the Spill Act. Also, NJDEP has made revisions to N.J.A.C. 7:1-7.5, 7.7, and 7.8 that should further facilitate the various reporting requirements of all interested parties. In particular, N.J.A.C. 7:1-7.5(a) has been revised to provide the industrial establishments with an option and clarification concerning their reporting responsibilities.

COMMENT: Several commenters felt that the information required in the written report pursuant to N.J.A.C. 7:1-7.5(b) was cumbersome and unrealistic considering the ten days required for submission of written reports pursuant to the Act.

RESPONSE: NJDEP requires comprehensive information in the written report required by N.J.A.C. 7:1-7.5(b) to provide sufficient information about hazardous discharges to municipalities, local boards of health and the Department. However, NJDEP agrees with the spirit of this comment and, upon adoption, has streamlined the Act's reporting requirements as follows:

- NJDEP developed a hazardous discharge report form available from NJDEP for use by all appropriate parties for compliance with the reporting requirements of the Act and N.J.A.C. 7:1-7.5(b). Compliance can be achieved by use of the form, except for a few items to be submitted separately, such as a site map and analytical results.
- NJDEP will no longer require submittal of a DPCC plan unless a DPCC plan, if applicable, has not previously been submitted to NJDEP.
- NJDEP revised N.J.A.C. 7:1-7.5(b)13 to identify more precisely the type of analytical and other related information to be included in the required written report. The revision details the Quality Assurance/Quality Control information the Department requires from the appropriate entities. Furthermore, to allow sufficient time to prepare the required information, N.J.A.C. 7:1-7.5(b) 13 now allows for the submission of the results of any applicable analyses conducted prior to an after containment activity to the appropriate parties within 30 days after the date of sample collection.

The Department believes that the above mentioned revisions will facilitate the proper and practical administration of the Act and N.J.A.C. 7:1-7.

COMMENT: One commenter believes that the Department's requirement that any remedial action be coordinated with NJDEP at N.J.A.C. 7:1-7.5(d) undermines the intent of that Act by suggesting that the burden of site restoration does not rest solely with the responsible party.

RESPONSE: The Department requires coordination of remedial actions to ensure, by adequate communication, that proposed environmental cleanup activity at a particular site does not conflict with other remedial actions. NJDEP coordination ensures compatible cleanup efforts that meet NJDEP cleanup requirements for the protection of the citizens and environment of New Jersey. The Department assumes no additional liability or responsibility for site restoration by such coordinating efforts.

In addition, the Department would like to clarify an important point concerning the scope of N.J.A.C. 7:1-7. A question arose concerning whether the requirements of the Act apply to historical hazardous discharges or spills or only to hazardous discharges which occurred after the Act's December 10, 1984 effective date. A historic hazardous discharge that was not reported to the Department prior to December 10, 1984 would be considered a hazardous discharge pursuant to N.J.S.A. 13:1K-15(b) and N.J.A.C. 7:1-7.3. Therefore, any hazardous discharge which was not reported to NJDEP prior to December 10, 1984 that an owner or operator of an industrial establishment knows or suspects occurred on-site, above or below ground, at the industrial establishment should be reported pursuant to N.J.A.C. 7:1-7 within 10 days of obtaining any information leading to such knowledge or suspicion. NJDEP hopes that this guidance will assist industrial establishments concerning compliance with the Act and N.J.A.C. 7:1-7.

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

SUBCHAPTER 7. HAZARDOUS SUBSTANCE DISCHARGE: REPORTS AND NOTICES

7:1-7.1 Scope

(a) This subchapter shall constitute the Department's rules governing the implementation of N.J.S.A. 13:1K-15 et seq. (P.L. 1984, c.210), commonly known as the "Hazardous Substance Discharge—Reports and Notices Act." This subchapter establishes reporting and notice procedures concerning discharges of hazardous substances to be followed by industrial establishments, the governing bodies of municipalities, local boards of health, and the Department pursuant to N.J.S.A. 13:1K-15 et seq.

(b) Compliance with the Act and this subchapter shall not relieve any person or other parties from complying with any reporting and notice requirements or other obligations imposed by the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or any other applicable act or regulation.

7:1-7.2 Construction

(a) This subchapter shall be liberally construed to allow the Department of Environmental Protection to implement its statutory functions pursuant to N.J.S.A. 13:1K-15 et seq.

(b) This subchapter may be amended, repealed or rescinded from time to time in conformance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., as amended and supplemented, and the Office of Administrative Law's Rules for Agency Rulemaking, N.J.A.C. 1:30.

7:1-7.3 Definitions

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

"Act" means N.J.S.A. 13:1K-15 et seq., (P.L. 1984, c.210), commonly known as the "Hazardous Substance Discharge—Reports and Notices Act".

"Agent(s) or officer(s) of the municipality" means a duly authorized representative of the municipality *or local board of health* pursuant to N.J.A.C. 7:1-7.7 *[(d)]* *(e)*.

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

"Hazardous substance" means those elements and compounds, including petroleum products, which are defined as such by the Department, after public hearing including, but not limited to the "List of Hazardous Substances" set forth in Appendix A of N.J.A.C. 7:1E, and which shall be consistent with, to the maximum extent possible and which shall include, the list of hazardous substances adopted by the Environmental Protection Agency pursuant to Section 311 of the "Federal Water Pollution Control Act Amendments of 1972" (33 USC §1321), and the list of toxic pollutants designated by Congress or the U.S. Environmental Protection Agency pursuant to Section 307 of that act (33 USC §1317); except that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of the Act and this subchapter.

"Hazardous Discharge" means a discharge of a hazardous substance required to be reported to the Department pursuant to the provisions of the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. and any rules and regulations adopted pursuant thereto, but shall not include any hazardous discharge reported to the Department prior to December 10, 1984.

"Industrial Establishment" means any place of business engaged in operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances on-site, above or below ground, and having a primary Standard Industrial Classification number within Major Group Numbers 22-39 inclusive, 46-49 inclusive, 51, 55, 75 or 76 as designated in the Standard Industrial Classification manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States.

7:1-7.4 General program information

Unless otherwise set forth pursuant to the provisions of this subchapter, all correspondence, questions, advice, *requests for copies of the Department's hazardous discharge report forms,* or other requests regarding this subchapter shall be directed to: Department of Environmental Protection, Division on Waste Management, Field Operations, Compliance and Enforcement—Headquarters, *[120 Route 156, Yardville]* *CN 407, Trenton,* New Jersey 08625, Attention: N.J.A.C. 7:1-7 Program, *[(609) 292-0967]* *(609) 588-3400*.

7:1-7.5 Reporting responsibility of owners or operators of industrial establishments

(a) An owner or operator of an industrial establishment, or real property which once was the site of an industrial establishment, who knows or suspects the occurrence of any hazardous discharge on-site, above or below ground at the industrial establishment or real property shall, within ten days of obtaining information leading to this knowledge or suspicion, make an inspection thereof and file a written report concerning this hazardous discharge with the governing body of the municipality in which the industrial establishment or real property is located and the local board of health.

***1. An owner or operator of an industrial establishment, or real property which once was the site of an industrial establishment, who knows or suspects the occurrence of any hazardous discharge on-site, above or below ground at the industrial establishment or real property may also file directly a written report concerning this hazardous discharge with the Department*.**

2. Any industrial establishment that does not submit to the Department a copy of the written report that is required by (b) below, shall submit an extra copy of the written report required by (b) below and all attachments thereto to the municipality for submission by the municipality to the Department, as required by (c) below.

(b) The written report required by (a) above shall contain sufficient detail to adequately describe the information required below, including, but not limited to:

1. Name of industrial establishment;
2. Name of individual reporting discharge;
3. Address of individual reporting discharge;
4. Telephone number of individual reporting discharge;
5. Date and time of hazardous discharge;
6. Actual location of hazardous discharge, including but not limited to:

- i. Name of company/site;
- ii. Street address (including block and lot numbers);
- iii. Municipality;
- iv. County;
- v. EPA ID number, if available; and
- vi. Site map of appropriate scale, identifying area in which discharge occurred.

7. Types of hazardous substances discharged;
8. Quantities of substances discharged, by type;
9. Copy of Discharge Prevention Containment and Countermeasure Plan pursuant to N.J.A.C. 7:1E-4.5, if applicable, ***provided that said plan has not previously been submitted to the Department*.**

10. Detailed description of action taken by owner or operator to contain discharge and/or remove any waste material;

11. Name of company(ies) contracted for removal/disposal/cleanup activity, if applicable;

12. Description of type, quantity, and location of samples taken, if applicable;

13. ***[Results of any analyses conducted both prior to and after containment activity, including Quality Assurance/Quality Control procedures, if applicable; and]* *Submission, no later than 30 days after collection of analytical samples, of the results of any analyses conducted prior to, during and after containment activity, if applicable, including but not limited to:**

- i. Name, address and phone number of laboratory and laboratory contact person conducting sample analysis;
- ii. Quality Assurance/Quality Control procedures utilized for sampling analyses;
- iii. Justification for the location, number and frequency of samples collected;
- iv. Detail sampling methodology for all environmental media, including soil, groundwater, surface water and air, as follows:

(1) Types of sample containers and closures, cleaning procedures of sample containers/closure and sampling equipment;

(2) Use of quality assurance samples (blanks, duplicates);

(3) Groundwater monitoring well installation techniques and designs; and

(4) Chain of custody procedures and sample documentation.

v. The analytical methodologies performed by parameters and justification for selection of monitoring parameters and analytical methodologies*.

14. Any other information concerning the hazardous discharge deemed necessary by the Department to carry out the provisions of the Act.

(c) ***Unless submitted directly to the Department by the industrial establishment pursuant to (a)1. above, a* *[A]* copy of the written report**

required by (b) above shall be sent by the governing body of the municipality ***[and local board of health]* *pursuant to N.J.A.C. 7:1-7.8(d)* to:**

New Jersey Department of Environmental Protection
Division of Waste Management
Field Operations Compliance and Enforcement Headquarters
[120 Route 156]* *CN 407
[Yardville]* *Trenton, New Jersey 08625
Attention: Assistant Director
N.J.A.C. 7:1-7 Report

[(d) In addition to the written report required by (b) above, the governing body of the municipality and local board of health shall also immediately notify the Department orally by telephoning the Department Hotline at (609) 292-7172 upon receipt of this information and provide the Department Hotline dispatcher with all information reasonably available required in (b) above.]

[(e)]* *(d)* Any remedial actions, which may include sampling, containment, and/or disposal of hazardous substance(s), to be conducted at these sites shall be coordinated with the Department's Division of Waste Management, Field Operations, Compliance and Enforcement—Headquarters, *[Yardville]* *CN 407, Trenton*, New Jersey, ***[(609) 292-0967]* *(609) 588-3400.**

7:1-7.6 Reporting liability

(a) Any person reporting a hazardous discharge pursuant to N.J.A.C. 7:1-7.5 shall not, solely by submission of the written report required by N.J.A.C. 7:1-7.5(b), incur liability for the cleanup of the hazardous discharge.

(b) The provisions of this section shall not affect a person's liability for the cleanup of a hazardous discharge under any other law, rule or regulation.

7:1-7.7 Reporting responsibility of the department

(a) When the Department obtains any information which leads it to suspect that a hazardous discharge has occurred it shall immediately notify, in writing and orally ***as specified in this section***, the local board of health and the governing body of the municipality in which the hazardous discharge has occurred ***unless these entities have previously been notified of said hazardous discharge by the local board of health or the governing body of the municipality pursuant to N.J.A.C. 7:1-7.8(a)*.**

(b) The governing body of the municipality and local board of health shall provide the Department with the name, address, and telephone number of a contact person and ***[alternative]* *alternate*** contact person for the purposes of (a) above within 30 days of the effective date of this subchapter:

1. If the Department is not notified of this contact person within the specified time, the ***municipal*** clerk and ***[local health officer]* *chairman of the local board of health*** shall be the individuals designated by the Department to be notified by the Department of any hazardous discharges within the boundaries of the municipality.

2. The governing body of the municipality and local board of health may change the contact person and ***[alternative]* *alternate*** contact person designated to receive the information from the Department for the purposes of (a) above upon written notification to the Department.

***[(c) Upon obtaining any information which leads it to suspect that a hazardous discharge has occurred in the jurisdiction of the municipality, the Department shall immediately notify orally the contact persons for the governing body of the municipality and the local board of health, as designated in (b) above, upon obtaining any information which leads it to suspect that a hazardous discharge has occurred in the jurisdiction of the municipality*.**

[(d) Within 10 days of the initial oral notification required by (c) above, the department shall issue a letter confirming, and if appropriate, expanding upon the initial oral notification to the appropriate contact persons for the governing body of the municipality and the local board of health pursuant to (b) above.

[(c)]* *(e)* The Department shall take appropriate action to verify that a hazardous discharge has occurred as suspected, including the authorization of agent(s) or officer(s) of the municipality or local board of health by an appropriate ***[Departmental]* *Department official to investigate the site of the suspected hazardous discharge:**

1. The agent(s) or officer(s) of the municipality shall be a representative(s) of the governing body of the municipality ***[and]* *or*** local board of health, including but not limited to, appropriately trained members of the police department, fire department, public health office, department of public works, township engineer, zoning officer, director of emergency management, or environmental compliance pollution officer.

2. Upon being contacted by the Department in writing or orally regarding a hazardous discharge an agent(s) or officer(s) of the municipality may be duly authorized ***by the Department*** to:

- i. conduct a visual assessment of the site of the hazardous discharge; and
- ii. Contact any parties potentially responsible for the hazardous discharge.

3. The agent(s) or officer(s) of the municipality shall report all findings to, and coordinate any further actions with, the Department as specified in N.J.A.C. 7:1-7.5 *(e)* *(d)*.

7:1-7.8 Reporting responsibility of local officials

(a) Any governing body of a municipality or local board of health shall immediately notify the Department, in writing and orally as specified in this section, upon obtaining any information pursuant to N.J.A.C. 7:1-7.5(a) or from any other source that a hazardous discharge has occurred within their jurisdiction ***unless previously notified of a hazardous discharge by the Department pursuant to N.J.A.C. 7:1-7.7(a)***

(b) The governing body of the municipality or local board of health shall provide the Department with information regarding any hazardous discharge pursuant to (a) above on the hazardous discharge report forms provided by the Department ***or their equivalent***, except if the information already has been provided for pursuant to N.J.A.C. 7:1-7.5(c).

(c) The information required in (b) above shall also be immediately reported to the Department Hotline (609) 292-7172.

(c) In addition to the written report required by (b) above, the governing body of the municipality and local board of health shall also immediately notify the Department by telephone at (609) 292-7172. The Department Hotline dispatcher shall be provided with any information available as required by N.J.A.C. 7:1-7.5(b).

(d) The written report required by (a) above shall be sent within ten days of discovery of the hazardous discharge as specified in N.J.A.C. 7:1-7.5(c).

7:1-7.9 Procedures for inclusions or exemption of groups with SIC codes from the definition of an industrial establishment

(a) The Department may, by amendment to this subchapter, include within the range of applicable Standard Industrial Classification numbers any other place of business not currently classified as an industrial establishment as deemed necessary to carry out the provisions of the Act.

(b) The following major groups, sub-groups or classes of operations pursuant to (a) above shall also be considered and included as industrial establishments for the purposes of the Act and this subchapter: (Reserved).

(c) Sub-groups or classes of operations within Standard Industrial Classification major group numbers within 22-39 inclusive, 46-49 inclusive, 51, 55, 75 or 76 may petition the Department, in writing, for an exemption as a class from the requirements of the Act and this subchapter based upon their determination that the operations of their type of industrial establishment do not pose a risk to public health and safety.

(d) Industrial establishment set forth in (c) above shall submit ***to the Department*** all appropriate documentation, evidence and other proofs that they deem justify exemption as a class from the Act and this subchapter.

(e) The Department on its own initiative may also establish a record based on experience or appropriate research justifying an exemption of a sub-group or class of operations as noted in (c) above.

(f) Upon a finding that a sub-group or class of operations noted in (c) above does not pose a risk to the public health and safety, the Department may amend (g) below pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et. seq., to exempt said sub-group or class of operations from consideration as an industrial establishment for the purposes of the Act and this subchapter.

(g) The following sub-groups or classes of operations within those sub-groups described in (c) above shall not be considered industrial establishments for the purposes of the Act and this subchapter: (Reserved).

7:1-7.10 Penalty assessment and injunctive relief

(a) A person who fails to make a required report, knowingly gives or causes to be given any false information in any such report or otherwise violates the provisions of the Act or this subchapter is liable to a penalty of not more than \$50,000.00 to be collected in a summary proceeding under "the Penalty Enforcement Law", N.J.S.A. 2A:58-1 et. seq., or in a court of competent jurisdiction wherein injunctive relief has been requested. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense.

(b) If any person violates any of the provisions of the Act or this subchapter, the Department of Environmental Protection, the governing body of the municipality or the local *[health department]* ***board of health*** may institute a civil action in the Superior Court for injunctive relief to prohibit and prevent the continuation of the violation and the court may proceed in a summary manner.

(a)

DIVISION OF WATER RESOURCES

Bureau of Shellfish Control

Shellfish-Growing Water Classification

Adopted Amendments: N.J.A.C. 7:12-1.2, 1.3, 1.4, 1.5, 1.6, and 2.1

Adopted New Rules: N.J.A.C. 7:12-1.8 and 2.15

Proposed: April 21, 1986 at 18 N.J.R. 784(a).

Adopted: May 23, 1986 by Richard T. Dewling, Commissioner, Department of Environmental Protection.

Filed: May 23, 1986 as R.1986 d.234, **without change.**

Authority: N.J.S.A. 13:1D-9 and 58:24-1.

Effective Date: June 16, 1986.

Expiration Date: June 6, 1988.

DEP Docket No. 011-86-03.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

7:12-1.2 Definitions

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

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

... "Sanctuary" means an area established by the department for research purposes.

"Seasonal area" means waters condemned and opened for the harvest of shellfish each year automatically by operation of the regulations in this chapter.

... "Spawner area" means those areas established by the department to re-establish shellfish populations.

"Special Permit Programs" means programs developed to utilize shellfish from waters classified other than approved.

7:12-1.3 Growing water condemnations

(a) Charts designating growing water classifications as hereinafter described are available from the Bureau of Shellfish Control Offices, Marine Police Stations, and Shellfisheries Field Offices at Bivalve and Nacote Creek. However, all persons are cautioned that emergency closures may be necessary and may not be charted. These Shellfish Growing Water Classification Charts are developed from Nautical Charts Number 12327 New York Harbor, 80th Edition, December 29, 1984; Number 12324 Intracoastal Waterway, Sandy Hook to Little Egg Harbor, 23rd Edition, June 1, 1985; Number 12316 Intracoastal Waterway, Little Egg Harbor to Cape May, 22nd Edition, May 4, 1985; and Number 12304 Delaware Bay, 30th Edition, March 16, 1985. The State Department of Environmental Protection hereby condemns all shellfish growing waters or other places from which shellfish are or may be taken at all times of the year, except when otherwise noted in N.J.A.C. 7:12-1.4, 1.5, 1.6, and 1.8.

1.-2. (No change.)

3. Raritan Bay area (A portion is designated as a Special Restricted area and a portion is designated as a Seasonal Special Restricted area. See: N.J.A.C. 7:12-1.6.):

i.-ii. (No change.)

iii. All the waters of Sandy Hook Bay and tributaries thereof; (Portions are designated as Special Restricted Areas or Seasonal Special Restricted Areas. See: N.J.A.C. 7:12-1.6.)

iv. The Special Restricted area is that portion of Sandy Hook Bay bounded by a line beginning at the south end of that pier maintained by the United States Navy in Leonardo (United States Navy Ammunition Depot-Earle) where it intersects the shoreline and following the shoreline in a generally southeasterly direction until it reaches the structure forming the western extent of the Atlantic Highlands Municipal Harbor, and then following the western edge of this structure in a northerly direction to its northernmost extent, and then connecting this structure with the breakwater (this breakwater or stonepile forms the northern boundary of the municipal harbor) and following the northern side of the breakwater in an easterly direction to its easternmost extent, where it is marked by the navigational marker designated as Flashing light 4 second 29ft 8M (Fl 4sec 29ft 8M) and then bearing approximately 201 degrees T to the mainland, and then following the shoreline in a generally southeasterly direction to the westernmost extent of the Route 36 highway bridge, spanning the Shrewsbury River and then following the northern edge of that bridge to where it intersects the shoreline on Sandy Hook, and then following the shoreline in a generally northerly direction until it intersects a line connecting Sandy Hook light, Fixed light 88ft 19M (F 88ft 19M) to the northernmost extent of the Earle Pier, and following that line bearing approximately 262 degrees T to the northernmost extent of the naval pier, and then following the westernmost side of the pier in a generally southwestern direction to its point of origin where the pier intersects with the shoreline. (This designation of Special Restricted area directly adjoins those waters defined as Seasonal Special Restricted areas in N.J.A.C. 7:12-1.6.)

4.-10. (No change.)

11. Barnegat Bay-Brick Township area and Dover Township form the Metedeconk River to Toms River (A portion is designated seasonal. See: N.J.A.C. 7:12-1.5):

i.-v. (No change.)

vi. All those waters of Shelter Cove west from a straight line connecting the points of land at its mouth, then all those waters west and north of a line from the southernmost point of land at the mouth of Shelter Cove and bearing approximately 154 degrees T to Flashing Red light "40" (Fl R "40"), then bearing approximately 181 degrees T toward Good Luck Point and terminating at its point of intersection with the Mathis Bridge, connecting the mainland with Pelican Island; the southern boundary of this condemned area shall follow said bridge in a westward direction and terminate at its connection with the mainland shore. The bridge is a common boundary line with paragraph 12 of this subsection.

12. (No change.)

13. Barnegat Bay-Berkeley Township area, Toms River to Potter Creek:

i. All the waters west of a line beginning on the north bank of the entrance to Good Luck Point Marina (at Good Luck Pt.) along the offshore ends of the piers in a southerly direction to the eastern end of Barnegat Pier, then bearing approximately 215 degrees T to Flashing Red light 4s "60" (Fl R 4s "60") north of Berkeley Shores, then bearing approximately 221 degrees T to and terminating at the most easterly point of land on the south bank of Potter Creek;

ii. (No change.)

14. Barnegat Bay-Berkeley Township, Potter Creek to Sunrise Beach (A portion is designated as Seasonal. See: N.J.A.C. 7:12-1.4.):

i. Potter Creek to Cedar Creek area: All those waters west of a line beginning at the most easternmost point of land (directly east of the terminus of Island Drive, Berkeley Township) on the south bank of Potter Creek (this point of land coincides with that described in subsection 13i above) and bearing approximately 182 degrees T to the northernmost point on the pier located on the northernmost point of land at Berkeley Island Park (Ocean County Park System);

ii. Cedar Creek to Laurel Harbor area: All those waters west of a line beginning at the bulkhead (located on the northeasternmost point of land at the mouth of Cedar Creek) located on the southeasternmost extent of Berkeley Island Park (Ocean County Park System) and bearing approximately 161 degrees T to the northernmost point of land on the unnamed island located just east of Laurel Harbor, and then following the eastern shoreline of this island in a southerly direction to the southernmost extent of this island, and then bearing approximately 207 degrees T to the Department Maintained marker located on the northernmost point of land on the mainland, (located at the northeastern extent of Laurel Boulevard in Lacy Township) and then following the shoreline in a southerly direction, and then westerly to the southernmost extent of land in Laurel Harbor (located at the southwesternmost extent of Laurel Boulevard in Lacy Township) and then bearing approximately 229 degrees T to the unnamed point of land that forms the southeastern bank

at the mouth of the Laurel Harbor lagoon complex where it terminates. (This Condemnation includes all waters of Cedar Creek and its tributaries as well as all waters comprising the Laurel Harbor lagoon complex.);

iii. (No change.)

15. (No change.)

16. Barnegat Bay-Little Egg Harbor-Long Beach Island area; Barnegat Light to Holgate (A portion is designated as Seasonal. See: N.J.A.C. 7:12-1.4 and 1.5):

i.-ii. (No change.)

iii. All those waters of the tributaries or creeks of Cedar Bonnet Island north of Route 72 (Manahawkin Causeway) enclosed by a line beginning on the easternmost bank at the mouth of the easternmost creek or tributary and then bearing approximately 270 degrees T to the western bank at the mouth of this tributary, and then following the shoreline easterly to the next tributary, creek, or lagoon's mouth, where it bears approximately 270 degrees T to the western bank of this body of water where it terminates.

17.-24. (No change.)

25. Brigantine area (A portion is designated as Seasonal. See: N.J.A.C. 7:12-1.5):

i. (No change.)

ii. All of Black Hole and St. Georges Thorofare north and east of a line from the point of land on the western shore, at the mouth of Sea King Lagoon and bearing approximately 348 degrees T to the opposite shore.

iii. (No change.)

26.-28. (No change.)

29. Great Egg Harbor River (A portion is designated as Seasonal. See: N.J.A.C. 7:12-1.5):

i. All of the Great Egg Harbor River and tributaries upstream from a line beginning at Flashing Red 8 (Fl R "8") and bearing approximately 208 degrees T to a department maintained marker at the mouth of an unnamed creek. This line coincides with the line described in N.J.A.C. 7:12-1.5);

ii.-iv. (No change.)

30. (No change.)

31. Strathmere and Sea Isle City area (A portion is designated as Seasonal. See: N.J.A.C. 7:12-1.4):

i.-vi. (No change.)

vii. All of Sunks Creek, Mill Creek, Ware Thorofare, Mill Thorofare and tributaries thereof, and portions of Townsend Sound north of a line from a department maintained marker on the prominent point of land along the western shoreline of Townsend Sound and bearing approximately 105 degrees T to another department maintained marker at the mouth of an unnamed tributary on the opposite shoreline;

viii. The area of Townsend Channel adjacent to the town of Townsends Inlet contained within a line beginning at the street end at 77th St. and running to a Department maintained marker at the mouth of Middle Thorofare, then to the southernmost pier in Townsends Channel (at the end of 94th Street) then running along that pier to the shore and terminating.

32. Avalon area:

i.-vi. (No change.)

vii. All of South Channel from a straight line beginning at the easternmost tip of the unnamed island at the confluence of South Channel and North Channel and bearing approximately 115 degrees T to the opposite shore of South Channel to a line that begins at the northernmost point of the unnamed island on the north side of the western entrance to South Channel and bearing approximately 246 degrees T and terminating on the western bank of the entrance to Leonard Thorofare.

viii. (No change.)

33.-34. (No change.)

35. The Wildwoods area (A portion is designated as a special restricted area):

i.-xv. (No change.)

xvi. Special restricted area:

(1) (No change.)

(2) All of Jarvis Sound south and west of a line connecting two unnamed tributaries (and passing through buoy 45 at the northern end of Jarvis Sound then along the shoreline in a westerly direction to the junction with Reubens Thorofare and Upper Thorofare, then across Upper Thorofare bearing approximately 311 degrees T then along the southern shoreline of Jarvis Sound across the mouth of Middle Thorofare and Lower Thorofare, then along the shoreline in a northerly direction across the mouth of Shell Thorofare and terminating at the point of origin.

36. Cape May (A portion is designated as a special restricted area):
i.-vi. (No change.)

vii. Special Restricted area: All of Cape May Inlet and Cape May Harbor inside a line beginning at Flashing light 7M (Fl 4 sec. 30 ft. 7M) at the outermost end of east jetty at Cape May Inlet, along the jetty and shoreline until it intersects a line connecting the 641 ft. Loran tower on the north side of the inlet and range light QK 36 2sec. marking the entrance channel through Cape May Inlet, then along the shoreline in a westerly direction and across Skunk Sound to a line connecting flashing red light (Fl R 4 sec.) marking the entrance to Cape May Canal and the radio tower at the U.S.C.G. Receiving Station, along that line to the shoreline, along the shoreline to a line beginning at the tank on the U.S.C.G. Training Center and bearing approximately 331 degrees T to buoy C "11" then along a line connecting buoy "C" with flashing green light 5(Fl G 2-1/2 sec. "5") then to the shore bearing approximately 157 degrees T, then along the shoreline to the light (Fl G 4 sec. 37 ft. 7M) end of the jetty then across the inlet to the Flashing light 7M fl 4 sec. 30 ft. 7M and terminating.

viii. (No change.)

37. Delaware Bay area (A portion is designated as Seasonal. See: N.J.A.C. 7:12-1.4):

i. All that portion of Delaware Bay contained within a line beginning at the pumping station at the mouth of Fishing Creek, Cape May County, bearing approximately 296 degrees T and extending into the bay for one nautical mile, then bearing approximately 199 degrees T to Flashing light number 4(R"4" Fl R 2.5 sec) at Crowshoal, then continuing to Cape May Lighthouse and terminating. The closure includes all tributaries flowing into the above described area, including Fishing Creek, Cox Hall Creek and Pond Creek. This condemnation adjoins the closure defined in paragraph 39vi of this subsection;

ii.-ix. (No change.)

x. Straight Creek: All of Straight Creek;

xi. (No change in text.)

xii. Cohansy Cove-Cohansy River Area: All of Delaware Bay, Cohansy Cove, Cohansy River, and tributaries inshore and upstream of a line from Fl 2.5 sec. 5 M "3" and bearing approximately 245 degrees T to buoy N "10", then bearing approximately 99 degrees T to a Department maintained marker on the mainland and terminating.

xiii. (No change in text.)

xiv. All of that portion of Delaware Bay and tributaries thereof inshore of a line from a Department-maintained marker at Beadon Point and bearing approximately 309 degrees T towards flashing light (Fl 4 sec. 33 ft 6M), but terminating at a Department-maintained marker on the shoreline at Nantuxent Pt.

38. (No change.)

39. Atlantic Ocean

i.-iv. (No change.)

v. All of the ocean waters inshore of a line beginning at the American Legion Building (the old Coast Guard Station) located at the corner of Second Avenue and 117th Street, Borough of Stone Harbor, with coordinates of latitude 39 degrees 02.4 minutes N., longitude of 74 degrees 46.2 minutes W., and bearing approximately 180 degrees T for approximately 3.4 nautical miles to a point with coordinates of latitude 38 degrees 59.0 minutes N., longitude 74 degrees 46.2 minutes W. (generally marked by a buoy charted as R "8" Fl R 4 sec. BELL at the entrance to Hereford Inlet), then bearing approximately 246 degrees T for approximately 4.9 nautical miles to the 641 ft Fl R Lt LORAN TOWER located on the United States Coast Guard Electronic Engineering Center, Lower Township, with coordinates of latitude 38 degrees 57.0 minutes N., and longitude of 74 degrees 52.0 minutes W., and terminating. This condemnation adjoins the closure defined in paragraph 35i of this subsection;

vi. All those waters inshore of a line beginning at the water tank located on the United States Coast Guard Training Center, City of Cape May, with coordinates of latitude 38 degrees 56.8 minutes N., and longitude 74 degrees 53.6 minutes W., and bearing approximately 151 degrees T to the New Jersey three nautical miles jurisdictional limit, then proceeding in a westerly direction three nautical miles offshore for approximately 8.5 nautical miles to a point with coordinates of latitude 38 degrees 54.3 minutes N., longitude 75 degrees 01.7 minutes W. (generally marked by a buoy charted as R "2" Fl R 4s) then bearing approximately 033 degrees T for approximately 2 nautical miles to a point with coordinates of latitude 38 degrees 56.0 minutes N., longitude 75 degrees 00.3 minutes W. (generally marked by a buoy charted as "4" Fl R 2.5sec. marking the southwest side of Crow Shoal), then along the line described in

paragraph 37i of this subsection to Cape May Lighthouse (Fl 15sec. 165 ft. 24M) and terminating. This condemnation adjoins the closure defined in paragraph 37i of this subchapter.

vii. (No change.)

7:12-1.4 Seasonally Approved Growing Waters (Approved November 1 through April 30, Condemned May 1 through October 31, yearly)

(a) (No change.)

1. Southern Barnegat Bay area:

i. Potter Creek to Laurel Harbor: Seasonal—Condemned May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All those waters east of the line described in N.J.A.C. 7:12-1.3(a) 14i and 14ii and west of a line beginning at the easternmost point of land on the southern bank of Potter Creek and bearing approximately 161 degrees T to Intracoastal Waterway channel marker Red Nun 62 (N "62") and then bearing approximately 181 degrees T to Flashing Red light 15ft "64" PA (Fl R 15ft "64" PA) and then bearing approximately 252 degrees T to the department maintained marker located on the northeasternmost point of land on the mainland, (located just northeast of the northeastern extent of Laurel Boulevard in Lacy Township) where it terminates; (This designation of Seasonally Approved waters directly adjoins those defined as Condemned in N.J.A.C. 7:12-1.3(a)14ii.)

ii. (No change.)

2. Barnegat Bay to Little Egg Harbor Bay-Long Beach Island area:

i. Northern Long Beach Island: Seasonal—Condemned May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All that portion of Barnegat Bay and Manahawkin Bay lying east of a line beginning on the northern point of land forming the mouth of the most northerly lagoon located between Butler and Meadow Streets in High Bar Harbor (Long Beach Township) and bearing approximately 270 degrees T to the northeast point of the northernmost of the two islands just offshore, (Edwin B. Forsythe National Wildlife Refuge—Barnegat Division) then along the east shore of that island to its southeast point, then bearing approximately 131 degrees T across the unnamed gut or thoro fare to the northeast point of the southernmost island, then along the east shore of that island to its easternmost point, then bearing approximately 144 degrees T to the most easterly point on Vol Sedge, then along the southeastern shore of that island to its southernmost point, and then bearing approximately 170 degrees T to the easternmost extent of the southern island of Vol Sedge, then bearing approximately 213 degrees T to the westernmost tip of Loveladies Harbor (marsh), then bearing approximately 190 degrees T to the westernmost point of land at the end of Bay View Road which forms the (southern bank) entrance to the Loveladies Harbor lagoon complex, then proceeding to where a line bearing approximately 177 degrees T to the standpipe in Harvey Cedars intersects the shoreline just west of Bay Terrace (Harvey Cedars), and then following the bulkhead or shoreline in a southerly direction, until reaching the southwesternmost point of land, located at the westernmost extent of Maiden Lane (Harvey Cedars), and then bearing approximately 220 degrees T a point of land just north of the northernmost extent of Kent Place (Harvey Cedars), and then following the western shoreline or bulkhead in a southerly direction across the mouths of the two lagoons (The northernmost lagoon located between Buckingham Avenue and Lange Avenue in Long Beach Township shall remain Condemned, and the southernmost lagoon, which is located immediately south of Lange Avenue shall also remain Condemned.) to the bulkhead on the point of land on the southern bank forming the entrance to the second of these lagoons, then bearing approximately 205 degrees T to the northernmost corner of the largest of the unnamed islands (just north east of Fl 8ft "85") off the mouth of Harvey Cove (Harvey Cove itself shall remain Condemned, See: N.J.A.C. 7:12-1.3(a)) then along that island's northern shoreline to its easternmost point then bearing approximately 115 degrees T to the westernmost point of land just west of the westernmost extent of West Salem Avenue in Harvey Cedars, then bearing approximately 219 degrees T to the westernmost point of land (marsh) located west of the westernmost extent of James Street in Long Beach Township, then bearing approximately 196 degrees T to the westernmost point of land located on the properties labeled as block 104, lot 10 and block 102, lot 10 (located just southwest of the westernmost extent of a private road known as Little Bridge Road) in Long Beach Township, then bearing approximately 209 degrees T to the end of the pier at the end of Bay Shore Street in Long Beach Township, then bearing approximately 247 degrees T to Flashing Green light "1" (Fl G "1"), then bearing

approximately 224 degrees T to Flashing Red light "2" (Fl R "2"), then bearing approximately 211 degrees T to a department maintained marker on Cedar Bonnet Island, then following the east shore of that island to where the eastern shoreline of Cedar Bonnet Island intersects with Route 72 (Manahawkin Causeway) and then following the southern edge of that highway in an easterly direction to its terminus where Route 72 intersects with Long Beach Island (in Ship Bottom).

ii. Southern Long Beach Island: Seasonal—Condemned May 1 through October 31 yearly, Approved November 1 through April 30 yearly;

(1) All those waters lying east of a line beginning at the point where Route 72 (Manahawkin Causeway) intersects with Long Beach Island (in Ship Bottom) and proceeding in a westerly direction as it follows the southern edge of Route 72 (this line coincides with that described in 7:12-1.4(2) above) to where the highway intersects with the westernmost shoreline of Cedar Bonnet Island, and then following that shoreline in a generally southerly direction, but following all changes in direction of the shoreline until reaching the southernmost point of Cedar Bonnet Island, and then bearing approximately 190 degrees T to the unnamed island immediately south (this island is generally considered part of the Cedar Bonnet group) and then following that shoreline in a southerly direction to that island's southernmost point where it intersects a line beginning at the range markers (department maintained) located on the above unnamed island and following that line bearing 203 degrees T to Flashing Red 8ft light "28" (Fl R 8ft "28") marking the intracoastal waterway, then bearing approximately 177 degrees T to the most northerly point of land on High Island and then following this island's eastern shoreline to its southernmost point, then bearing approximately 107 degrees T to channel marker Red Nun "36" (RN "36"), then bearing approximately 118 degrees T to Flashing Red light "38" (Fl R "38"), then following the west side of the intracoastal waterway bearing approximately 097 degrees T to channel marker R "42" (R "42") then bearing approximately 220 degrees T to channel marker Nun "44A" (N "44A"), then bearing approximately 208 degrees T to Flashing Green light 8ft "47" (Fl G 8ft "47"), then bearing approximately 254 degrees T to Can buoy "49" (C "49"), then bearing approximately 212 degrees T to Flashing Green light "53" (Fl G "53"), then bearing approximately 175 degrees T to the northernmost point of the easternmost Marshelder Island, and then following the eastern shoreline of this island in a southerly direction to this island's southernmost point, and then bearing approximately 200 degrees T to Flashing Red light 8ft "64" (Fl R 8ft "64"), then bearing approximately 233 degrees T to the northernmost point on Mordecai Island, then following the western shore of that island to its westernmost point, then bearing approximately 245 degrees T to Flashing Green light "75" (Fl G "75"), then bearing approximately 210 degrees T to channel marker Can "77" (C "77"), then bearing approximately 195 degrees T to channel marker Can "81" (C "81"), and then bearing approximately 135 degrees T to the point where the northern boundary of the Edwin B. Forsythe National Wildlife Refuge—Barnegat Division, Holgate Unit, intersects the shoreline (Long Beach Township) where this line terminates.

3. (No change.)

4. Absecon Bay-Absecon Channel Reed Bay area: Seasonal—Condemned May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

i. All of Middle Thorofare, Wills Thorofare, Absecon Channel and Absecon Bay contained within a line beginning at day beacon "73" (located at the Confluence of Broad Creek and Man Killer Bay) and bearing approximately 227 degrees T to the point of land on the western shore at the mouth of Point Bar Thorofare, then along that shoreline and across the mouth of Newfound Thorofare, then along that shoreline and across the mouth of Jonathan Thorofare, then along that shoreline to the Department maintained marker located at the mouth of the first major man-made cut or lagoon (not including mosquito ditches) and bearing approximately 036 degrees T to another Department maintained marker on the opposite bank and continuing along that shoreline in a northeast direction to the Department maintained marker, then bearing approximately 120 degrees T to the point of land on the north shore of Cordery Thorofare, then across the mouth of Cordery Thorofare, then along that shoreline in a southerly direction to a Department maintained marker, then across the mouth of Steelman Thorofare, then along the northeast shore of Wills Thorofare and Absecon Channel to Middle Thorofare, then across Middle Thorofare to its point of origin at buoy "73" and terminating."

ii. (No change.)

5. Brigantine Area: Seasonal—Condemned May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

i. All the waters of St. Georges Thorofare from the point of land on the western shore, at the mouth of Sea King Lagoon and bearing approximately 348 degrees T to the north side of St. Georges Thorofare, then along that shoreline in a westerly direction to a department maintained marker at Rum Point, then bearing approximately 108 degrees T to the opposite shore of St. Georges Thorofare, then along that shoreline in a generally easterly direction to the point of origin.

Renumber 5.-9. as 6.-10. (No change.)

7:12-1.5 Seasonally Approved Growing Waters (Approved January 1 through April 30 yearly, Condemned May 1 through December 31 yearly)

(a) The Seasonal waters described in this subchapter shall be Condemned for the harvest of shellfish from May 1 through December 31 yearly and approved January 1 through April 30 yearly. The areas are designated on the charts referred to in N.J.A.C. 7:12-1.3 and are described as:

1. (No change.)

2. Island Beach areas: Mantoloking to Island Beach State Park: Seasonal—Condemned May 1 through December 31 yearly, Approved January 1 through April 30 yearly.

i. All of those areas lying between the lines described in N.J.A.C. 7:12-1.3(a) 10, 12, and 13 and a straight line beginning at the most westerly point of land on Dutchman's Point, just south of Mantoloking Shores, and bearing approximately 227 degrees T to the most northwesterly point of land on NW Point Island, off Chadwick Beach, then following that island's northeasterly shore to its most easterly point of land, then bearing approximately 191 degrees T to the northwestern-most tip of the most northern of the two islands off Ocean Beach, then bearing approximately 246 degrees T to Flashing light "1" (Fl "1"), then bearing approximately 186 degrees T to Flashing Red light "2" (Fl R "2") off Ortley Beach, then all those waters lying between the eastern shoreline and the Thomas A. Mathis Bridge and a straight line bearing approximately 230 degrees T to Flashing Green light 15ft "43" PA (Fl G 15ft "43" PA) which forms a common point of termination with the Seasonal area line described in (a)3ii below.

ii. All of those areas lying between the lines described in N.J.A.C. 7:12-1.3(a) 10, 12, and 13 including all those waters north of a straight line extending from the northernmost cupola on Island Beach State Park (Currently the Island Beach State Park Maintenance Center, formerly the old USCG Station number 110.) and bearing approximately 303 degrees T through Flashing Red light 4s "60" (Fl R 4s "60") just north of Berkeley Shores. The northern boundary of this Condemned area shall be the Thomas A. Mathis Bridge.

3. Barnegat Bay-Brick Township area and Dover Township from the Metedeconk River to Toms River: Seasonal—Condemned May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All of those areas of Barnegat Bay lying between the Condemned area line at the mouth of Kettle Creek as described in N.J.A.C. 7:12-1.3(a)11iii, and a straight line beginning at Seaweed Point and bearing approximately 135 degrees T to Flashing Red light 15ft "30" PA (Fl R 15ft "30" PA) off Seaweed Point, and then bearing approximately 251 degrees T to Andrew Pt. on Green Island.

ii. All of those waters of Barnegat Bay lying between the lines described in N.J.A.C. 7:12-1.3(a) 11iv and a straight line extending from the point of land forming the northern bank mouth of Shelter Cove and bearing approximately 160 degrees T to Flashing Red light "40" (Fl R "40"), then all those waters lying between the western shoreline (mainland) and the Thomas A. Mathis Bridge and a straight line bearing approximately 152 degrees T to Flashing Green light 15ft "43" PA (Fl G 15ft "43" PA) which forms a common point of termination with the Seasonal area line described in paragraph 2i above.

4. Manahawkin Bay, Mallard Island, Beach Haven West (Village Harbor) area: Seasonal—Condemned May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All those waters of Manahawkin and Little Egg Harbor Bays lying between the Condemned area lines described in N.J.A.C. 7:12-1.3(a)17i and 17ii and a straight line beginning on the westernmost end of the most westerly island along the Manahawkin Causeway (Route 72), then bearing approximately 173 degrees T to the most easterly point of Thorofare Island, then bearing approximately 218 degrees T to department maintained marker "J", then bearing approximately 275 degrees T to department maintained marker "K", then bearing approximately 032 degrees T and terminating on the southeasternmost point of Oyster Point.

5.-8. (No change.)

9. Ocean City-Somers Point area: Seasonal—Condemned May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. (No change.)

ii. Great Egg Harbor Bay, Great Egg Harbor River and Middle River: Seasonal—Condemned May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

(1) All that portion of Great Egg Harbor Bay, Great Egg Harbor River and Middle River contained within a line beginning at the southwest tip of Drag Island and bearing approximately 266 degrees T through the south side base of the second electric tower (uncharted) to the northern-point at the mouth of the Tuckahoe River, then along the western shoreline of Great Egg Harbor River in a northwesterly direction to Middle River, then along the south shore of Middle River to the tributary leading to Swan Pond, then directly across Middle River and along the shore to Great Egg Harbor River, then along the shore of Great Egg Harbor River to Flashing Red 8 (Fl R "8") and bearing approximately 208 degrees T to a department maintained marker at the mouth of an unnamed creek, then along the eastern shore of Great Egg Harbor River in a downstream direction to the north shore of Patcong Creek, then across the line marking the mouth of Patcong Creek described in N.J.A.C. 7:12-1.3(a)28ii, then along the north shore of Great Egg Harbor Bay and Drag Channel to the Garden State Parkway, then along the eastern side of the Garden State Parkway to the northern shore of Drag Island, then along the shoreline in a westerly direction to its origin at the southwest tip where this line terminates.

7:12-1.6 Seasonal Special Restricted growing waters (Special Restricted Area: May 1 through September 30 yearly, Condemned Area: October 1 through April 30 yearly)

(a) The Seasonal Special Restricted waters described below shall be Condemned Areas for the harvest of shellfish from October 1 through April 30 yearly, and Special Restricted Areas for the harvest of shellfish only in conjunction with the approved resource recovery programs described in N.J.A.C. 7:12-2 and N.J.A.C. 7:17, during the period May 1 through September 30 yearly. These waters will not be utilized, i.e., will not be available for the harvest of any shellfish, within any resource recovery program until the levels of contamination in shellfish tissue from certain heavy metals are found to be within those recommended by the U.S. Food and Drug Administration (FDA) as determined by this department from analyses of ongoing studies. This area is designated on the charts referred to in N.J.A.C. 7:12-1.3 and is described as:

1. Raritan Bay area: Seasonal Special Restricted Areas—Special Restricted Area from May 1 through September 30 yearly, and Condemned Areas from October 1 through April 30 yearly;

i. All those waters contained within a line beginning on the northernmost point of Conaskonk Point near Union Beach, New Jersey and bearing approximately 345 degrees T to Sequine Point at Princes Bay, Staten Island, New York, until it intersects the New York-New Jersey boundary, then along that boundary in an easterly direction until it intersects the Raritan Bay East Reach Channel, then along the southwest boundary of that channel in a southeasterly direction (approximate bearing 106 degrees T) to the channel marker designated as GR "TC" Interrupted Quick Flashing Green light (GR "TC" I QK Fl G) located at the intersection of Raritan Bay East Reach, Sandy Hook Channel and Terminal Channel, and then bearing approximately 098 degrees T to the navigation aid designated as "Equal Interval 6 Second and Vertical Beam light 38ft 15M Bell" (E. Int. 6 sec and VB 38ft 15M Bell) located on the shore at Sandy Hook Point, then proceeding in a generally southerly direction following the western shoreline of Sandy Hook until it intersects a line connecting Sandy Hook light, Fixed light 88ft 19M (F 88ft 19M) to the northernmost extent of that pier maintained by the United States Navy in Leonardo (United States Navy Ammunition Depot-Earle) (approximate bearing 262 degrees T) and then following this intersecting line to the northern end of the Navy Pier, and then following the easternmost side of that pier to where it intersects the shoreline in Leonardo, and then following the shoreline in a generally northwest direction to the northernmost point of land on Point Comfort (Keansburg), then bearing approximately 272 degrees T to the northernmost point of land on Conaskonk Point (Union Beach), its point of origin.

7:12-1.8 Sanctuaries

The department may establish areas known as sanctuaries to be utilized for research purposes such as spawner areas. Sanctuaries shall be delineated by the department. Shellfish may be relocated to such an area to supply brood stock to re-establish populations elsewhere. When

shellfish from waters other than Approved are relocated to areas classified as Approved or Seasonally Approved, the relocation site (sanctuary) will be Condemned to the harvest of all shellfish.

7:12-2.1 General provisions

(a)-(i) (No change.)

(j) The department may apply more restrictive delineations to harvest areas that are described in N.J.A.C. 7:12-1.3 and 1.6 by specifying the sections available for harvest on the special permit. These limitations will be made at the discretion of the department when deemed necessary to protect the health, safety, and welfare of the public.

7:12-2.15 Scientific and Non-Human Collection Program

The department may continue to issue special permits for the collection of shellfish from waters classified other than Approved for the purpose of non-human consumption and scientific research. Conditions of the permit will be tailored as necessary to the specific program(s) requested. This permit is issued in conjunction with, and to the holder of, the collection permit issued by the Division of Fish, Game, and Wildlife pursuant to authority granted at N.J.S.A. 23:4-52.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Defining Status of Indigenous Nongame Wildlife Species

Adopted Amendment: N.J.A.C. 7:25-4.17

Proposed: April 7, 1986 at 18 N.J.R. 601(a).

Adopted: May 20, 1986 by Michael F. Catania, Deputy

Commissioner, Department of Environmental Protection.

Filed: May 23, 1986 as R.1986 d.230, **without change.**

Authority: N.J.S.A. 23:2A-4 and 23:2A-7.

Effective Date: June 16, 1986.

Expiration Date: February 18, 1991.

DEP Docket No. 010-86-03.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

7:25-4.17 Defining status of indigenous nongame wildlife species of New Jersey

(a) The following table defines the status of indigenous nongame wildlife species of New Jersey.

BIRDS

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Merlin, *Falco columbarius*

S

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(b)

Bureau of Shellfisheries

Clam Dredging

Adopted Repeal: N.J.A.C. 7:25-8.1

Proposed: February 18, 1986 at 18 N.J.R. 396(a).

Adopted: May 20, 1986 by Michael F. Catania, Commissioner,

Department of Environmental Protection.

Filed: May 23, 1986 as R.1986 d.232, **without change.**

Authority: N.J.S.A. 50:1-5.

Effective Date: June 16, 1986.

Expiration Date: Not applicable.

DEP Docket No. 004-86-01.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adopted repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:25-8.1.

(a)

**Bureau of Shellfisheries
Hard Clam Size Limits**

Adopted New Rule: N.J.A.C. 7:25-9

Proposed: January 21, 1986 at 18 N.J.R. 146(a).
Adopted: May 20, 1986 by Michael F. Catania, Deputy
Commissioner, Department of Environmental Protection.
Filed: May 23, 1986 as R.1986 d.231, **with substantive changes** not
requiring additional public notice and comment (see N.J.A.C.
1:30-4.3).

Authority: N.J.S.A. 23:2B-14 and 50:1-5.
Effective Date: June 16, 1986.
Expiration Date: February 18, 1991.

Summary of Public Comments and Agency Responses:
The Bureau of Shellfisheries received public comment at the February meeting of the Atlantic Coast Section of the Shell Fisheries Council, to the effect that the proposed new rule should include a provision to allow a three percent tolerance for harvest and possession of clams under one and one-half inches in length. The Council moved to recommend the inclusion of this allowance, noting that a three percent tolerance had been part of the former size limit regulation. At their March meeting, the Marine Fisheries Council agreed with the comments made by the Shell Fisheries Council and recommended the inclusion of a three percent tolerance level for possession of undersized clams. The Department agrees with both Councils and has amended the rule upon adoption as requested.

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

SUBCHAPTER 9. HARD CLAM SIZE LIMITS

7:25-9.1 Scope
This subchapter constitutes the rules governing the minimum size of hard clams allowed to be harvested in New Jersey. Nothing in this subchapter or in N.J.A.C. 7:12 or 7:17 shall prevent the harvest and replanting of hard clams with shell length less than one and one-half inches when such harvest and replanting are an express part of a program designed and directed by the department to prevent the loss of hard clams which might occur under conditions such as channel dredging or other destructive action.

7:25-9.2 Purpose
The purpose of this subchapter is to provide a means to control the minimum size of hard clams harvested in New Jersey.

7:25-9.3 Construction
These rules shall be liberally construed to permit the Department to effectuate the purposes of N.J.S.A. 50:1-5.

7:25-9.4 Definitions
The following term, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:
"Clam hatchery" means any operation which obtains clams through the process of artificial spawning and culture methods.

7:25-9.5 Taking of hard clams
(a) No person shall take, attempt to take, possess, sell, offer for sale, purchase, or attempt to purchase hard clams, Mercenaria mercenaria, with a shell length less than one and one-half inches ***provided, however, where all clams are in containers, no violation shall be deemed to have occurred where no more than three percent of the number of clams in possession in any single container have a shell length less than one and one-half inches, and where non-containerized clams are in possession, no violation shall be deemed to have occurred where no more than three percent of total number of clams in possession have a shell length less than one and one-half inches***.

(b) Clams shall be culled by the harvester where taken, and all clams less than one and one-half inches in shell length shall be redeposited immediately on the bottom from where they were harvested.

(c) Possession and sale of hatchery-reared clams by a clam hatchery and purchase and possession of hatchery-reared clams from a clam hatchery shall be exempt from the provisions of (a) and (b) above provided that the purpose of this possession and sale or purchase is for planting and rearing hard clams to market size (that is, not less than one and one-half inches). Possession and/or sale of hatchery-reared seed clams less

than one and one-half inches in length for the purpose of marketing and consumption shall not be exempt from the provisions of (a) and (b) above and shall not be permitted.

(d) Enforcement personnel shall seize all hard clams less than one and one-half inches in length which are in violation of N.J.A.C. 7:25-9.5 and return them to estuarine waters.

7:25-9.6 Penalties
(a) The penalty for a first offense violation of N.J.A.C. 7:25-9.5, where no more than 100 hard clams fail to meet the regulatory minimum, shall be as follows:

Number of clams	Penalty
1- 20	\$ 20.00
21- 40	\$ 50.00
41-100	\$100.00

(b) The penalty for a first offense violation of N.J.A.C. 7:25-9.5, where more than 100 hard clams fail to meet the regulatory minimum, shall be as prescribed at N.J.S.A. 23:2B-14a(1) for the first offense, that is, not less than \$100.00 or more than \$3,000 for the first offense.

(c) The penalty for any subsequent offense, regardless of number of hard clams involved, shall be as prescribed at N.J.S.A. 23:2B14(a)1 for any subsequent offense, that is, not less than \$200.00 or more than \$5,000.

(b)

Possession, Propagation, Liberation, Sale and Importation of Game Animals and Game Birds in New Jersey

Adopted New Rule: N.J.A.C. 7:25-10

Proposed: March 17, 1986 at 18 N.J.R. 533(a).
Adopted: May 20, 1986 by Michael F. Catania, Deputy
Commissioner, Department of Environmental Protection.
Filed: May 23, 1986 as R.1986 d.233, **without change**.
Authority: N.J.S.A. 23:3-28 through 39 and 13:1B-3.
Effective Date: June 16, 1986.
Expiration Date: February 18, 1991.
DEP Docket No. 007-86-02.

Summary of Comments and Agency Responses:
COMMENT: A present cooperator objected to the requirement that holders of Cooperator Permits must submit quarterly reports to the Division.

RESPONSE: Due to the volume of animals handled by cooperators and the fact that animals are released back into the wild after rehabilitation, the quarterly reports are necessary to more closely monitor the activities of this group and the subsequent impact of releasing animals back into the wild.

COMMENT: Permit fees should be greater for fur farming.
RESPONSE: All permit fees, including fur farming, are set without provision for change at N.J.S.A. 23:3-28 through 39.

COMMENT: All captive species of game animals should be inoculated against viral diseases.
RESPONSE: Presently, no commercially available vaccines for viral diseases are licensed for use on wildlife.

COMMENT: Permit denials and suspensions should be explained.
RESPONSE: Permit denials and suspensions are adequately addressed in the rule.

COMMENT: Inspections of facilities are unnecessary.
RESPONSE: Facility inspection is necessary to determine the adequacy of animal care and protection of the public.

Full text of the adoption follows.

SUBCHAPTER 10. POSSESSION, PROPAGATION, LIBERATION, SALE AND IMPORTATION OF GAME ANIMALS AND GAME BIRDS

7:25-10.1 Scope
This subchapter shall constitute the rules governing the possession, propagation, liberation, sale and importation of game mammals and game birds pursuant to N.J.S.A. 23:3-28 through 39.

7:25-10.2 Construction
This subchapter shall be liberally construed to permit the department to discharge its statutory functions.

7:25-10.3 Purpose

This subchapter is promulgated to regulate the possession, propagation, liberation, sale, and importation of game mammals and game birds through a permit system, with conditions associated therewith, to be issued at the discretion of the division.

7:25-10.4 Definitions

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

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

"Division" means the Division of Fish, Game and Wildlife or its successor within the Department of Environmental Protection.

"Director" means the Director of Fish, Game and Wildlife or his successor within the Department of Environmental Protection.

"Game animal" means any mammal for which a legal hunting or trapping season has been established in New Jersey, identified in this subchapter, or designated a game animal by the Fish and Game Council in the annual game code.

"Game bird" means any bird for which a legal hunting season has been established in New Jersey, identified in this subchapter, or designated a game bird by the Fish and Game Council in the annual game code.

"Person" shall include, but is not limited to, corporations, companies, associations, societies including nonprofit organizations, firms, partnerships, joint stock companies, individuals, and governmental entities.

"Qualified person" means a natural person presenting to the division the written testimonials from two well-known scientists certifying to the good character and fitness of the person to be entrusted with the privilege of holding the relevant permit.

7:25-10.5 Permit required

(a) Except as hereinafter provided, no person shall have in possession any game animal or game bird unless that person has first received a permit from the division. The permit form and permit application form shall be prescribed by and be obtainable from the division.

(b) No person shall liberate within this state any game animal or game bird unless that person has first received a permit therefor from the division.

(c) No person shall import into this state any game animal or game bird unless that person has first received a permit therefor from the division.

(d) The permit requirement pursuant to this section shall not apply to game animals and game birds legally taken or killed pursuant to the general hunting and fishing license statutes, N.J.S.A. 23:3-1 through 22, and during the season therefor.

7:25-10.6 Game animals and game birds for which a permit is required for possession

(a) A permit shall be required for possession of game animals including the following mammals:

1. Eastern cottontail rabbit (*Sylvilagus floridanus*);
2. Whitetail jackrabbit (*Lepus townsendi*);
3. Blacktail jackrabbit (*Lepus californicus*);
4. European hare (*Lepus europaeus*);
5. Eastern gray squirrel (*Sciurus carolinensis*);
6. Woodchuck (*Marmota monax*);
7. Beaver (*Castor canadensis*);
8. River otter (*Lutra canadensis*);
9. Muskrat (*Ondatra zibethicus*);
10. Nutria (*Myocaster coypus*);
11. Mink (*Mustela vison*);
12. Weasel (*Mustela* spp.);
13. Virginia opossum (*Didelphis virginiana*);
14. Striped skunk (*Mephitis mephitis*);
15. Raccoon (*Procyon lotor*);
16. Red fox (*Vulpes vulpes*);
17. Gray fox (*Urocyon cinereoargenteus*);
18. Coyote (*Canis latrans*);
19. Black bear (*Ursus americanus*);
20. Bobcat (*Felis rufus*);
21. Whitetail deer (*Odocoileus virginianus*)

(b) A permit shall be required for possession of the following game birds:

1. Family Anatidae:
 - i. Geese;
 - ii. Brant;
 - iii. Tundra swans; and
 - iv. Whistling, dabbling, diving, and sea ducks;

2. Family Rallidae:

- i. Rails;
- ii. Moorhens;
- iii. Coots; and
- iv. Mud hens;
3. Family Charadriidae:
 - i. Plovers;
 - ii. Surf birds; and
 - iii. Shorebirds;
 4. Family Scolopacidae:
 - i. Sand pipers;
 - ii. Woodcock;
 - iii. Snipe;
 - iv. Curlews; and
 - v. Tattlers;
 5. Family Meleagrididae:
 - i. Wild turkeys;
 6. Family Tetraonidae:
 - i. Grouse; and
 - ii. Prairie chickens;
 7. Family Phasianidae:
 - i. Pheasants;
 - ii. Partridges; and
 - iii. Quails;
 8. Family Columbidae:
 - i. Mourning dove; and
 9. Family Corvidae:
 - i. Common crow.

(c) The division may issue a permit for the possession of the mammals or birds listed in (a) and (b) above provided the applicant has satisfactorily met the criteria contained within N.J.A.C. 7:25-10.8.

7:25-10.7 Categories of permits, expiration, fees, sales receipt required, records and reports required

(a) The division, when it appears to be in the public interest, may issue the following permits:

1. "Individual Hobby" may be issued to persons holding game animals for hobby purposes or as pets;

2. "Scientific Holding" may be issued to qualified persons holding game animals or game birds for scientific observation, captive breeding attempts and other scientific or educational study;

3. "Zoological" may be issued to private and public institutions which exhibit game animals or game birds for possession, importation, exportation, and sale of species listed in the permit;

4. "Propagation and Sales" may be issued to persons engaged in the propagation and/or sale of game animals or game birds for importation, exportation, and sale of species listed in the permit;

5. "Animal Exhibitor" may be issued to exhibitors of game animals or game birds other than zoos, including traveling exhibits, small exhibitions not qualifying as zoos, and circuses;

6. "Animal Theatrical Agency" may be issued to persons owning game animals or game birds to be used for advertising, acting, or theatrical appearances, permitting importation, exportation, and sale of species listed in the permit;

7. "Fur Farming" may be issued to persons engaged in the business of fur farming the species listed at N.J.A.C. 7:25-10.6(a)7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 20; and

8. "Cooperator" may be issued to persons who are deemed qualified by the division under the criteria set forth in the most current edition of the "Cooperator's Manual" or, in the absence of such manual, based on the need as determined by the division to rear orphaned juvenile wildlife species and rehabilitate injured wildlife species listed under N.J.A.C. 7:25-10.6(a) and (b). Persons issued this permit must also maintain applicable federal permits where required.

(b) All possession permits shall expire on December 31 of the year of issue.

(c) The license fee for each permit shall be \$5.00; provided however that there shall be no fee for the Cooperator permit.

(d) All permits must be displayed in a prominent place. The sale of game animals or game birds to any person must be accompanied by a "Game Animal or Game Bird Sales Receipt," the form of which shall be prescribed by and obtainable from the division, and which shall serve as a temporary possession permit for a period of 20 days after the date of sale.

(e) Propagation and sales dealers shall submit to the division an annual inventory of acquisitions, sales, and exchanges upon expiration or renewal of their permits.

(f) Zoological, Exhibitor, Theatrical, and Cooperator permit holders must submit quarterly reports of births, deaths, acquisitions, and disposals.

(g) Periodic inspections may be made by division-designated personnel and shall consist of examination of game animal or game bird, their food, facilities, holding pen and exhibit area, and a review of relevant records pertaining to these species.

(h) Animal exhibitors and animal theatrical agencies shall notify the division no less than two weeks prior to any scheduled activity in New Jersey covered by their permits in order to allow inspection of the activity by division personnel.

7:25-10.8 General possession criteria

(a) Prior to the issuance of any permit under this subchapter, the applicant shall, on forms provided by the division, demonstrate that:

1. The origin of the animal is not from the wild stock of this state or any other state except where authorized by the division for rehabilitation or scientific purposes;
2. The animal will be fed an adequate diet;
3. The animal is housed or caged in a manner that:
 - i. Allows the animal to perform the normal behavior patterns of its species; and
 - ii. Prevents disease, liberation, or accidental injury to the animal and the public;
4. The method of acquisition did not violate the laws and regulations of this state, any other state, or the federal government;
5. Competent and adequate licensed veterinary services for the care and treatment of the animal are readily available; and
6. The animal is free of infectious diseases and parasites which may be dangerous to the animal, livestock, or people of the State. The division may request certification from a licensed New Jersey veterinarian or a person recognized as qualified by the director to make such certification that the animal for which the permit is being sought is free from infectious diseases and parasites.

7:25-10.9 Emergency possession

(a) Persons may temporarily possess without permit a game animal or game bird, other than a potentially dangerous species defined at N.J.A.C. 7:25-10.10, which is orphaned, injured, or displaced provided that:

1. The division law enforcement office of jurisdiction, DEP Emergency Hotline, or the Wildlife Control Unit is notified of such emergency possession within 12 hours of acquisition;
 2. The Division Wildlife Control Unit reviews the case for the purpose of prescribing a course of action that is in the best interest of the animal or bird so possessed; and
 3. The emergency possession of the game animal or game bird does not violate any local ordinances or requirements.
4. Contact phone numbers for cases of emergency possession are as follows:
- i. Northern Region Law Enforcement Office (201) 735-8240;
 - ii. Central Region Law Enforcement Office (201) 259-2120;
 - iii. Southern Region Law Enforcement Office (609) 629-0555;
 - iv. DEP Emergency Action Hotline (24 hours) (609) 292-7172; and
 - v. Wildlife Control Unit (201) 735-8793.

(b) The game animal or bird held without a permit therefor shall be surrendered upon demand by the division.

7:25-10.10 Potentially dangerous species

(a) "Potentially dangerous species" is defined as any game animal or game bird which, in the opinion of the division, is potentially capable of inflicting serious or fatal injuries, of being an agricultural pest, of being detrimental to existing or future wild populations, or of being a menace to public health, including, but not limited to, the following:

Order	Family
Carnivora	Canidae—Nondomestic dogs
	Ursidae—Bears
	Felidae—Nondomestic cats
Artiodactyla	Cervidae—Deer

(b) The division, in its discretion, may issue a permit for possession of a potentially dangerous game animal or game bird only after a clear showing that the criteria for the possession of such potentially dangerous game animal or game bird have been met.

7:25-10.11 Criteria for the possession of potentially dangerous species

(a) In addition to the general criteria enumerated in N.J.A.C. 7:25-10.8, every person applying for a permit to possess potentially dangerous species shall meet each of the following criteria to the satisfaction of the division:

1. Education and background: Persons wishing to apply for a permit to possess a potentially dangerous species must have extensive experience in maintaining the species desired or related species;

2. Knowledge: Persons wishing to apply for a permit to possess potentially dangerous species must demonstrate a working knowledge and expertise in handling and caring for each of the species desired;

3. Other licenses and permits: Persons applying to possess potentially dangerous species must obtain, in addition to New Jersey Captive Game Animal or Game Bird Permit, all other applicable permits covering the possession of such species. Any permit issued for the possession of such animal by the division shall not exempt an applicant from compliance with any other law of the State, or subdivision of the State, any municipality, or the federal government, regarding construction necessary to house the animal, or other local requirements;

4. Purpose and intent: Persons applying to possess potentially dangerous species must submit a written statement of the purpose and intent of keeping the species;

5. Housing and feeding: Persons applying for a permit to possess a potentially dangerous species must supply a written description of the housing and caging facilities for the species required including a summary detailing a continuous source of food appropriate for the specific diet of the animals. Facilities must be constructed to prevent the possible escape of the animal. Division personnel may inspect the completed facilities to determine if the facilities are suitable for the game animal or game birds; and

6. Protection of the public: The housing facilities must also be constructed to prevent public access to, and contact with, the animal. The potentially dangerous species may not be kept as a household pet except when compelled by the infancy of the animal. The public must not be allowed access to the animal, including animals used for exhibition purposes.

7:25-10.12 Denial, suspension, revocation, and hearings

(a) The department may suspend the permits described in N.J.A.C. 7:25-10.7 and 7:25-10.10 for periods of time up to their duration upon the violation of any permit condition or any regulation appearing in this subchapter. The department may revoke the permits described in N.J.A.C. 7:25-10.7 and 7:25-10.10 upon finding in any five-year period two or more violations of any permit condition(s) or any regulation appearing in this subchapter. After revocation, no permit shall be issued to the violator within two years from the date of the second violation, or within three years from the date of the third or subsequent violation.

(b) In the event the department determines the necessity for denial of a permit application for, suspension of, or revocation of, any permit described in N.J.A.C. 7:25-10.7 and 7:25-10.10, the department shall issue a notice of intent to deny, suspend, or revoke, setting forth the reasons for such action. Where appropriate, a compliance directive shall accompany the notice of intent.

(c) The recipient of the notice of intent may request a contested case hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1, by filing a written request to the department therefor within 20 days from the receipt of the notice of intent described above at (b).

1. A request for a contested case hearing shall clearly state:
 - i. The name of the recipient;
 - ii. The departmental decision from which the recipient seeks relief;
 - iii. The details of how the departmental decision aggrieves the recipient; and
 - iv. The findings of fact incorporated within the notice of intent that the recipient contests.

2. The department shall review each hearing request and, upon a determination that the matter constitutes a contested case, grant a hearing. The denial of a request for a contested case hearing shall be considered to be final agency action on the matter.

3. The granting of a request for a contested case hearing shall not automatically stay the suspension or revocation.

(d) In the case of a notice of suspension or revocation of a permit issued pursuant to N.J.A.C. 7:25-10.10(b), the recipient of such notice shall immediately comply with any departmental directive as to disposal of the captive potentially dangerous species.

(e) Notwithstanding the provision at (c)3 above, in the case of a notice of suspension or revocation of a permit issued pursuant to N.J.A.C. 7:25-10.7, the recipient of such notice shall comply with any departmental directive as to disposal of the captive species upon final suspension or revocation.

7:25-10.13 Miscellaneous provisions

(a) Any person who transfers possession, as distinguished from ownership, or location of any game animal or game bird for which a permit has been issued, shall, within 48 hours, report in writing to the division exactly which animal(s) was transferred, the name and address of the person to whom the animal(s) was transferred and the location to which the animal(s) was transferred. No transfer shall be permitted without prior written approval of the division of a potentially dangerous species as defined at N.J.A.C. 7:25-10.10.

(b) Any person, issued a permit, who violates or fails to continually conform to the criteria established for the issuance of his permit, shall be considered to have violated an express condition of the permit and shall be deemed to be in possession of the animal or bird without a permit. Permit violators shall be subject to prosecution for possession of the animal or bird without a permit, and may be subject to the penalty prescribed by statute.

(c) No person shall acquire additional game animals or game birds under any one permit without prior written permission from the division. Progeny of permitted captive game animals or game birds are exempt from this requirement provided the permittee can biologically substantiate the increase in numbers from permitted captive game animals or game birds and reports the increase on the annual inventory report.

(d) As a condition of any permit issued under this subchapter the division may require the permitted game animal or game bird be quarantined for the period specified by the division.

(e) Any permittee shall allow division personnel, at any reasonable time, to inspect the housing facilities of the permitted species to determine compliance with the permit requirements and criteria.

(f) Nothing in this subchapter relative to the possession of Game Animals and Game Birds is intended to preempt any federal, state, or local requirement that is more stringent nor exempt any person from obtaining any permit required by these governmental entities.

HEALTH

(a)

DIVISION OF EPIDEMIOLOGY AND DISEASE CONTROL

Cancer Epidemiology Services Cancer Registry

Adopted Repeal: N.J.A.C. 8:57-1.19 and 1.20

Adopted New Rule: N.J.A.C. 8:57-6

Proposed: December 2, 1985 at 17 N.J.R. 2836(b).

Adopted: May 23, 1986 by John H. Rutledge, M.D., Acting State Commissioner of Health.

Filed: May 23, 1986 as R.1986 d.227, **without change.**

Authority: N.J.S.A. 26:2-104 et seq.

Effective Date: June 16, 1986.

Expiration Date: June 18, 1990.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Health proposed the repeal of N.J.A.C. 8:57-1.19 and 1.20 and the adoption of new rule N.J.A.C. 8:57-6 concerning the reporting of cancer and other tumorous and precancerous conditions.

Comments were received from the following persons:

Nancy Walborn, RRA, Chairman, Legislative Committee, Medical Record Association of New Jersey

Warren E. Gager, Administrator, William B. Kessler Memorial Hospital

Helen M. Kennedy, Executive Vice President/Administrator, Riverside General Hospital

Martha Kozloski, RRA, Associate Director, Health Information Services, West Jersey Health System

John A. Paterson, DDS, Vice President for Medical Affairs, St. Joseph's Hospital and Medical Center

Ellen Farrell, RRA, Director, Medical Records Department, Christ Hospital

Michele Kearney, RRA, Director, Medical Record Department, Columbus Hospital

Maureen M. Barron, RRA, Director, Medical Record Association of New Jersey

Karen Eisele Jadach, RRA, Director, Medical Records Department, The Medical Center at Princeton

Barbara E. Woolley, Director, Medical Records Department, The Medical Center at Princeton

Tumor Registrars Association of New Jersey Executive Committee

Doris Giarra, RRA, Director, Medical Record Department, John E.

Runnells Hospital

Diane Jablonowski, RRA, Director, Medical Record Department, Cherry Hill Division, Kennedy Memorial Hospital

Jerome B. Cohen, DO, FACGP, President, New Jersey Association of Osteopathic Physicians and Surgeons

George Hill, MD, The University of Medicine and Dentistry of New Jersey

The comments received are summarized below together with the Department's response to each comment. All comments are on file at the New Jersey Department of Health.

COMMENT: Most comments addressed the economic impact of the proposed new rule. Submission of operative reports and follow-up information to the State Cancer Registry places an additional cost on hospitals to pull and refile medical records, review treatment records, and photocopy additional information.

RESPONSE: Reporting to the State Cancer Registry is a legal requirement which has always been an allowable cost in the rate setting process. Increased costs resulting from the requirements of sending operative reports on surgically treated cases and sending follow-up information are appealable to the Hospital Rate Setting Commission under any appeal option, including the "accept" option.

COMMENT: Several organizations suggested that the Cancer Registry use routinely available data from Vital Statistics and from the Rate Setting Program (Uniform Billing data and hospital discharge data) as a source of follow-up rather than require facilities to provide this information.

RESPONSE: When possible, the Cancer Registry does conduct passive follow-up using routine data sources such as death certificates. However, neither the Uniform Billing data nor the discharge abstracts contain personal identifiers, and therefore cannot be used to match against the Registry files for follow-up.

COMMENT: Dr. Jerome Cohen expressed support for the new regulations and added that the follow-up information collected by the State Cancer Registry should include data on the entire course of treatment rather than be limited to the first course of treatment.

RESPONSE: While this type of information would be beneficial to analyses of patient survival, information on the first course provides enough information to allow evaluation of patient survival by type of treatment received. Expansion of the follow-up data would impose a large financial cost on hospitals and the State Cancer Registry.

Full text of the adoption follows.

SUBCHAPTER 6. CANCER REGISTRY

8:57-6.1 Reporting of cancer

(a) Cases of cancer and other tumorous and precancerous diseases, which shall be specified in a listing to be supplied by the Commissioner of Health and which are initially diagnosed after the effective date of these regulations, shall be reported to the State Department of Health.

(b) The administrative officer of every health care facility shall be responsible for reporting to the State Department of Health every case of cancer or other specified tumorous and precancerous disease when it is initially diagnosed or first admitted to that facility. A report shall also be given for each subsequent primary cancer diagnosed in an individual.

(c) Every physician and dentist shall report to the State Department of Health an initial diagnosis of each case of cancer or other specified tumorous and precancerous disease not referred to or previously diagnosed in a health care facility in the State of New Jersey.

(d) The director of every independent clinical laboratory shall report to the State Department of Health results of examination of tissue specimens and/or hematology examinations indicating the existence of cancer or other specified tumorous and precancerous disease, not previously reported from that laboratory.

(e) The information to be reported shall be provided upon forms supplied by the State Department of Health. The forms must be completed entirely, or supplemental information must be supplied by submitting copies of the history and physical section of the medical record and the discharge summary. A hospital tumor registry abstract form may be used, provided that information required by the State Commissioner of Health is recorded therein according to standardized definitions utilized by the State Department of Health.

(f) A copy of the pathology tissue report and/or hematology report shall be required in cases confirmed by laboratory analysis.

(g) A copy of the operative report shall be required in cases who receive surgical cancer treatment.

(h) All case reports shall be sent within six months of the date of diagnosis or within three months of the date of discharge from the reporting facility, whichever is sooner.

(i) Follow-up reports shall be sent on each cancer case at least annually to confirm vital status until the patient's death.

(j) Every health care facility and independent clinical laboratory shall allow representatives of the State Department of Health to obtain information from all medical, pathological, and other pertinent records and logs related to cancer cases, as necessary for fulfilling the functions of the cancer registry program.

(k) Every health care facility and independent clinical laboratory shall allow access to or provide necessary information on specified cancer patients and other patients specified by characteristics for research studies related to cancer prevention and control conducted by the State Department of Health and which have been approved by the State Commissioner of Health after appropriate review for assuring protection of human subjects. This shall include patients who came under the care of the health facility prior to the effective date of the regulations.

8:57-6.2 Reportable list

(a) If a diagnosis includes the following words the case must be reported:

CANCER
MALIGNANT
CARCINOMA
SARCOMA
LYMPHOMA
LEUKEMIA

(b) Basal cell carcinomas of the skin need not be reported except when diagnosed in the following sites: labia, clitoris, vulva, prepuce, penis, and scrotum. Certain other tumors, along with the more common carcinomas and sarcomas of particular body sites, are reportable and are included in the reportable list. The tumors are listed under the body site of the primary tumor. If it cannot be decided whether a case must be reported, the State Registry Office should be contacted for guidance.

(c) Since "soft tissue" tumors can arise in nearly any body site, the (primary site) soft tissue must also be consulted for any questionable neoplasm.

(d) All conditions which are listed on the reportable list must be reported by each New Jersey facility.

ADRENAL

Adrenal cortical carcinoma
Chromaffin paraganglioma (*)
Ganglioneuroblastoma
Neuroblastoma
Neuroepithelioma
Paraganglioma (+)
Pheochromocytoma
Sympathicoblastoma

ANUS (see G-I tract)

APPENDIX (see G-I tract)

BILE DUCTS (see gall bladder and bile ducts)

BLOOD (see Hematopoietic/Lymphoid)

BLOOD VESSELS (see soft tissues)

BONE AND JOINTS

Adamantinoma
Ameloblastoma, malignant only
Angioblastoma (+)
Angiosarcoma
Chondrosarcoma
Chordoma
Ewing's Sarcoma
Fibrosarcoma (medullary, periosteal, central, endosteal)
Giant cell tumor of bone (+)
Hemangioendothelioma
Malignant giant cell tumor
Malignant hemangioendothelioma

Mesenchymal chondrosarcoma
Myeloma
Osteoclastoma (+)
Osteogenic sarcoma
Osteosarcoma
Parosteal osteoma
Plasmacytoma (+)

BONE MARROW (see Hematopoietic/Lymphoid)

BRAIN AND SPINAL CORD

Astroblastoma
Astrocytoma (fibrillary, gemistocytic, pilocytic, protoplasmic)
Atypical pineal teratoma (+)
Ependymoblastoma
Ependymoma
Ganglioneuroblastoma
Germinoma
Glioblastoma multiforme
Glioma, all
Hemangiopericytoma
Malignant choroid plexus papilloma
Medulloblastoma
Medulloepithelioma
Meningioma (*)
Myxopapillary ependymoma (+)
Neuroblastoma
Oligodendrocytoma or oligodendroblastoma
Oligodendroglioma
Pinealocytoma
Pinealoma (+)
Pineoblastoma
Pineocytoma (+)
Polarespongioblastoma
Spongioblastoma
Subependymal astrocytoma (+)
Subependymoma (+)

BREAST

Adenocarcinoma
Apocrine carcinoma
Colloid carcinoma
Comedocarcinoma
Cribiform carcinoma
Cystosarcoma phyllodes, malignant only
Ductal carcinoma, in situ
Fibroadenoma phyllodes, malignant only
Giant Fibroadenoma, malignant only
Infiltrating carcinoma, NOS
Infiltrating ductal carcinoma
Infiltrating lobular carcinoma
Intraductal (papillary) carcinoma
Lobular carcinoma, in situ (+)
Lobular neoplasia
Medullary carcinoma
Non-infiltrating papillary carcinoma
Paget's disease
Stromal sarcoma of breast
Tubular carcinoma

BRONCHUS (see lung)

CERVIX (see uterus)

COLON (see G-I tract)

EAR (see skin, soft tissue)

ENDOMETRIUM (see uterus)

ESOPHAGUS (see G-I tract)

EYE

Epidermoid carcinoma
Melanoma, malignant
Retinoblastoma
Squamous cell carcinoma
Squamous cell epithelioma
(Tumors of the orbit: See soft tissues and Hematopoietic/Lymphoid)

EXTRA-ADRENAL PARAGANGLIA (see adrenal)

FALLOPIAN TUBE (see uterus)

GALL BLADDER AND BILE DUCTS

Adenocarcinoma
Carcinoma (other)

GASTRO-INTESTINAL TRACT (esophagus, stomach, intestine, appendix, colon, anus)

Adenoacanthoma
Adenocarcinoma
Adenoidcystic carcinoma
(Adeno) carcinoma in Adenomatous polyp with no invasion of stalk
Adenosarcoma
Apudoma (+)
Argentaffinoma (+)
Bowen's disease of anus
Carcinoid (except benign)
Carcinosarcoma
Clear cell leiomyoma
Cloacogenic carcinoma
Epidermoid carcinoma
Gastrinoma (+)
Kaposi's Sarcoma
Leiomyoblastoma (+)
Leiomyosarcoma
Linitis plastica
Lymphoma
Mixed tumor of esophagus, malignant only
Paget's disease of anus
Signet ring cell carcinoma
Squamous cell carcinoma
Squamous cell epithelioma
Transitional cell carcinoma

(See also Hematopoietic/Lymphoid)

HEMATOPOIETIC/LYMPHOID (including blood, bone marrow, lymph nodes, spleen, and tumors of hematopoietic or lymphoid histogenesis found in other sites.)

Acute erythremic myelosis
Acute megakaryocytic myelosis
Agnogenic myeloid metaplasia (*)
DiGuglielmo syndrome
Erythro leukemia
Histiocyte predominant Hodgkin's Disease
Histiocytic medullary reticulosis
Histiocytosis-X (*)
Hodgkin's Disease
Letterer-Siwe's Disease
Leukemia, all
Leukemic reticuloendotheliosis
Lymphocyte depleted Hodgkin's Disease
Lymphocyte predominant Hodgkin's Disease
Lymphoma, all
Lymphosarcoma
Malignant histiocytosis
Malignant lymphoreticular process
Malignant megakaryocytosis
Malignant reticulosis
Megakaryocytic myelosis
Mixed cellularity Hodgkin's Disease
Multiple myeloma
Mycosis fungoides
Myeloid metaplasia (*)
Myeloma
Myeloproliferative disorder (+)
Myelosclerosis (with myeloid metaplasia) (+)
Nodular Sclerosing Hodgkin's Disease
Panmyelosis (+)
Polycythemia Vera (+)
Plasmacytoma (+)
Reticulum cell sarcoma
Sezary's disease
Sezary's syndrome
Waldenstrom's macroglobulinemia or syndrome

HYPOPHARYNX (see oral cavity)

KIDNEY

Adenocarcinoma
Adenomyosarcoma
Clear cell carcinoma
Hypernephroma
Nephroblastoma
Renal cell carcinoma
Squamous cell carcinoma
Transitional cell carcinoma
Transitional cell papilloma (*)
Tubular adenoma (+)
Wilms's Tumor

LARYNX AND TRACHEA

Adenocarcinoma
Adenocystic carcinoma
Carcinoid (+)
Cylindroma
Squamous cell carcinoma

LIP (see oral cavity)

LIVER

Angiosarcoma
Bile duct carcinoma
Cholangiocarcinoma
Hepatoblastoma
Hepatocellular adenoma (*)
Hepatocellular carcinoma
Hepatoma (*)
Liver cell adenoma (*)

LUNG AND BRONCHUS

Adenocarcinoma
Adenoid cystic carcinoma
APUDoma (+)
Argentaffinoma (+)
Bronchial adenoma (+)
Bronchial adenoma (carcinoid type)
Carcinoid (+)
Cylindroma
Epidermoid carcinoma
Large cell (anaplastic) carcinoma
Oat cell carcinoma
Small cell (anaplastic) carcinoma
Squamous cell carcinoma
Undifferentiated carcinoma

LYMPH NODE (see Hematopoietic/Lymphoid)

MEDIASTINUM (see Hematopoietic/Lymphoid, soft tissue, or thymus)

MENINGES (see brain)

MUSCLE (see soft tissue)

NERVE (see soft tissue)

NOSE (Nasal cavity, Para-nasal sinus and Nasopharynx)

Adenocarcinoma
Epidermoid carcinoma
Esthesioneuroblastoma
Lymphoepithelioma
Malignant mesenchymoma
Neuroblastoma
Rhabdomyosarcoma
Sarcoma botryoides
Squamous cell carcinoma

ORAL CAVITY AND SALIVARY GLANDS

Adenocarcinoma
Adenoid cystic carcinoma
Acinic cell carcinoma
Acinic cell tumor (+)
Cylindroma
Epidermoid carcinoma
Lymphoepithelioma

Melanoma, malignant
Mixed tumor, malignant only
Mixed tumor, salivary gland type, malignant only
Mucoepidermoid carcinoma
Mucoepidermoid tumor (+)
Pleomorphic adenoma, malignant only
Squamous cell carcinoma
Transitional cell carcinoma
Undifferentiated carcinoma
Verrucous carcinoma

OROPHARYNX (see oral cavity)

OVARY

Adenocarcinoma, NOS
Arrhenoblastoma, malignant
Borderline tumor (+)
Brenner tumor (*)
Carcinoma, NOS
Choriocarcinoma
Clear cell carcinoma
Cystadenoma (*)
Dysgerminoma
Embryonal carcinoma
Endodermal sinus tumor
Endometrioid carcinoma
Granulosa cell tumor (+)
Granulosa cell carcinoma
Granulosa cell tumor, malignant
Granulosa-theca cell tumor (+)
Gonadoblastoma (+)
Gynandroblastoma (+)
Leydig cell tumor, malignant
Malignant teratoma
Mesonephroid carcinoma
Mucinous cystadenocarcinoma
Mucinous papillary cystadenoma of borderline malignancy (+)
Mucinous papillary cystadenoma with low malignant potential (+)
Papillary serous cystadenocarcinoma
Pseudomucinous cystadenocarcinoma
Seminoma
Serous papillary cystadenocarcinoma
Serous papillary cystadenoma of borderline malignancy (+)
Serous papillary cystadenoma with low malignant potential (+)
Sertoli-leydig cell carcinoma
Teratoma, malignant
Theca-granulosa cell tumor (+)
Yolk-sac tumor

PANCREAS

Adenocarcinoma
Alpha-cell adenoma (*)
Beta-cell adenoma (*)
Cystadenoma (*)
Delta-cell adenoma (*)
Gastrinoma (+)
Glucagonoma (*)
Insulinoma (*)
Islet cell adenoma (*)
Islet cell carcinoma
Islet cell tumor (*)

PARAGANGLIA

Non-chromaffin paraganglioma (+)
(see also adrenal gland)

PARATHYROID

Carcinoma, all

PARANASAL SINUSES (see nose)

PENIS

Basal cell carcinoma of Penis and Prepuce (skin of)
Bowen's disease

Erythroplasia of Queyrat
Squamous cell carcinoma
Verrucous carcinoma

PERICARDIUM (see pleura, pericardium, peritoneum)

PERITONEUM (see pleura, pericardium, peritoneum)

PHARYNX (see oral cavity)

PINEAL (see brain)

PITUITARY

Acidophil adenoma (*)
Basophil adenoma (*)
Carcinoma
Chromophobe adenoma (*)
Craniopharyngioma (+)
Eosinophil adenoma (*)
Mixed acidophil-basophil adenoma (*)
Mucoid cell adenoma (*)

PLACENTA

Choriocarcinoma
Chorioepithelioma
Invasive mole (+)
Malignant hydatiform mole (+)

PLEURA, PERITONEUM, PERICARDIUM

Fibrosarcoma
Mesothelioma
Sarcoma

PROSTATE AND SEMINAL VESICLES

Adenocarcinoma
Adenoid cystic carcinoma
Alveolar rhabdomyosarcoma
Carcinoma
Carcinosarcoma
Endometrioid carcinoma
Rhabdomyosarcoma

RECTUM (see G-I tract)

SALIVARY GLANDS (see oral cavity)

SKIN

Amelanotic melanoma
Basal cell carcinoma of labia, clitoris, vulva, prepuce, penis and scrotum
Bowen's disease of anus and penis
Hutchinson's melanotic freckle
Lentigo maligna
Melanocarcinoma
Melanoma
Melanosarcoma
Mycosis Fungoides
Squamous cell carcinoma
Superficial spreading melanoma
Sweat gland carcinoma

(see also soft tissue)

SOFT TISSUE (Including retroperitoneum, peripheral nerve)

Alveolar rhabdomyosarcoma
Alveolar soft parts sarcoma
Angiofibrosarcoma
Angiosarcoma
Chondrosarcoma
Clear cell sarcoma of tendons
Dermatofibrosarcoma protuberans
Embryonal rhabdomyosarcoma
Fibromyxosarcoma
Fibrosarcoma
Fibrous histiocytoma, malignant only
Hemangioendothelial sarcoma
Hemangioendothelioma, malignant only
Hemangiopericytoma, malignant only

Juvenile rhabdomyosarcoma
Kaposi's sarcoma
Leiomyosarcoma
Liposarcoma
Lymphangioendothelioma, malignant
Lymphangiosarcoma
Malignant granular cell tumor
Malignant mesenchymoma
Malignant rhabdomyoma
Malignant schwannoma
Malignant xanthofibroma
Metastasizing leiomyoma
Myosarcoma
Myxosarcoma
Neuroblastoma
Neurogenic sarcoma
Neurilemmoma, malignant
Neurilemmosarcoma
Osteosarcoma
Paraganglioma, malignant
Reticulum cell sarcoma
Rhabdomyosarcoma
Sarcoma botryoides
Synovial sarcoma

SPINAL CORD (see brain)

SPLEEN (see Hematopoietic/Lymphoid)

STOMACH (see G-I tract)

TESTIS

Carcinoid tumor (+)
Choriocarcinoma
Chorionepithelioma
Embryoma
Embryonal carcinoma
Embryonal teratoma
Endodermal sinus tumor
Germ cell carcinoma
Gonadal stromal tumor, malignant only
Gonadoblastoma (+)
Interstitial cell carcinoma
Leydig cell carcinoma
Mesonephroma
Polyembryoma
Seminoma
Sertoli cell carcinoma
Spermatoblastoma
Spermatocytic seminoma
Spermatocytoma
Teratoblastoma
Teratocarcinoma
Teratoma (+)
Vitelline tumor
Yolk-sac tumor

THYMUS

Epithelioid thymoma (*)
Lymphocytic thymoma (*)
Malignant thymoma
Seminoma
Spindle cell thymoma (*)
Thymic carcinoid
Thymoma (*)

THYROID

Adenocarcinoma
Anaplastic carcinoma
Follicular carcinoma
Giant cell carcinoma
Hurthle cell adenoma, malignant only
Hurthle cell tumor, malignant only
Medullary carcinoma
Occult sclerosing carcinoma
Papillary carcinoma
Undifferentiated carcinoma

TRACHEA (see larynx)

URINARY BLADDER, URETER, URETHRA

Adenocarcinoma
Adenosarcoma
Carcinosarcoma
Chemodectoma, malignant only
Mullerian mixed tumors
Papillary transitional cell carcinoma
Papilloma (+)
Paraganglioma (+)
Pheochromocytoma
Rhabdomyosarcoma
Squamous cell carcinoma
Transitional cell carcinoma
Transitional papilloma (*)

UTERUS, UTERINE TUBES, CERVIX

Adenoacanthoma
Adenocarcinoma
Adenosarcoma
Adenosquamous carcinoma
Carcinoma in situ CIN III, IV
Endolymphatic stromal myosis (+)
Endometrial stromal sarcoma
Leiomyosarcoma
Mesonephric carcinoma
Mesonephroma
Mixed mesodermal tumor

VULVA AND VAGINA

Basal cell carcinoma of vulva, clitoris, and labia
Clear cell carcinoma
Mesonephroid carcinoma
Mesonephroma
Paget's disease
Squamous cell carcinoma

NOTE: The following superscripts indicate the nature of other than overtly malignant reportable tumors listed:

- (*) Benign reportable
- (+) Borderline, reportable

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual and Several Provider Manuals

Medically Needy Program

Adopted Amendments:

Administration Manual: N.J.A.C. 10:49 Foreword, 1.1, 1.2, 1.4

Transportation Services Manual: N.J.A.C. 10:50-1.5, 2.3

Pharmacy Manual: N.J.A.C. 10:51-1.2, 1.14, 3.1

Manual for Hospital Services: N.J.A.C. 10:52-1.2, 1.3, 1.6, 1.8, 1.19

Manual for Special Hospital Services: N.J.A.C. 10:53-1.2, 1.3, 1.5, 1.7, 1.15

Manual for Physician's Services: N.J.A.C. 10:54-1.2, 1.4, 1.7, 1.9, 1.10

Prosthetic and Orthotic Services Manual: N.J.A.C. 10:55-2.2

Manual for Dental Services: N.J.A.C. 10:56-1.12, 2.1

Podiatry Services Manual: N.J.A.C. 10:57-1.3, 1.7, 1.13, 2.3

Medical Supplier Manual: N.J.A.C. 10:59-2.3

Independent Laboratory Services: N.J.A.C. 10:61-2.2

Vision Care Manual: N.J.A.C. 10:62-1.4, 3.3

Long Term Care Services Manual: N.J.A.C. 10:63-1.16, 2.1

Medical Day Care Manual: N.J.A.C. 10:65-1.2, 2.5

Independent Clinic Services: N.J.A.C. 10:66-1.6

Manual for Psychological Services: N.J.A.C. 10:67-2.3

Manual for Chiropractic Services: N.J.A.C. 10:68-1.2

Proposed: April 21, 1986 at 18 N.J.R. 803(a).

Adopted: May 23, 1986 by Geoffrey S. Perselay, Acting Commissioner, Department of Human Services.

Filed: May 23, 1986 as R.1986 d.236, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4D-3i(8), 6g, 7, a, b, c; 1902(a)(10) of the Social Security Act, 42 CFR 435 Subpart D.

Effective Date: June 16, 1986.

Operative Date: July 1, 1986.

Expiration Date: See June 2, 1986 Register (18 N.J.R. 1209).

Summary of Public Comments and Agency Responses:

There was one comment on the proposal from the Jersey Association of Medical Equipment Suppliers (J.A.M.E.S.). The commentator supported the proposal. Durable medical equipment will be available to all three coverage groups in accordance with Medicaid policies and procedures.

Summary of Changes between Proposal and Adoption:

The Division has added some clarifying language to N.J.A.C. 10:49-1.1(c)4ii to indicate form FD-311 is a claim transmittal form rather than an authorization document. The form is only used to identify those claims that were not considered by the county welfare agency or board of social service in determining spend-down. Claims listed on the FD-311 may be considered for payment.

There was also additional language added to clarify limitations on services. N.J.A.C. 10:49-1.4(b)4 was amended to indicate that same day surgery provided in a hospital outpatient department cannot be covered. Also, services provided in satellite outpatient facilities which are reimbursed according to a hospital outpatient reimbursement methodology cannot be a covered service under the Medically Needy Program.

N.J.A.C. 10:49-1.4(b)6 specifically excludes medical day services rendered in a hospital-based facility. Medical day care services are still available to coverage groups A and C when provided in a non-hospital based facility.

The New Jersey legislation establishing the Medically Needy Program does not provide coverage for outpatient hospital services (P.L. 1985, c.371, approved November 25, 1985 and amended by P.L. 1985, c.510, approved January 21, 1986).

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

CHAPTER 49 ADMINISTRATION FOREWORD

The New Jersey Medical Assistance and Health Services Act (chapter 413, Laws of 1968) established a program of assistance and services for defined groups of persons to enable them to secure quality medical care. This program, commonly known as "Medicaid" or "Title XIX", will be referred to as the New Jersey Medicaid Program or the program.

The New Jersey Medicaid Program is administered by the Division of Medical Assistance and Health Services through its Central Office and through Medicaid district offices located throughout the State of New Jersey.

Reimbursement for services provided under the program is accomplished in conformity with Title XIX regulations. Payments are ob-

tained through the Division's Bureau of Claims and Accounts or through either of its two Fiscal Agents, Blue Cross/Blue Shield of New Jersey, Inc. and The Prudential Insurance Company of America, depending upon the type of service being reimbursed.

Each New Jersey Medicaid manual consists of two chapters, each chapter divided into smaller subchapters. The first chapter concerns general administrative policies of the New Jersey Medicaid Program. The second chapter is specific to the type of service provided; for example, physician services, hospital services, etc. This manual is designed for use by a provider who is billing for services furnished under the program. It contains informational and procedural material needed to assist the provider to understand the rules and regulations of participation in the program and to insure prompt and efficient payment of claims. The procedures described in this manual were developed to achieve the goals of the program with due consideration both to the needs of the covered persons, and promotion of effective relationships with providers.

This manual was written in accordance with Federal and State laws, rules and regulations and with the intent to assure that such laws, rules and regulations are uniformly applied.

As a supplement to this manual, a newsletter system is utilized for the prompt dissemination of information concerning policy clarification and/or changes to the New Jersey Medicaid Program. Additionally, manual page revisions are updated as administrative changes occur. Periodically, therefore, revised sections, entire pages and entire chapters are issued accordingly. It is recommended that these newsletters, manual page revisions, and so forth, be filed with your manual at the time of receipt of such documents.

10:49-1.1 Who is eligible for Medicaid

(a) Individuals eligible for Medicaid are divided into those eligible for all services under the New Jersey Medicaid Program (see (b) below) and those individuals (Medically Needy) eligible for only certain services (see (c) below).

(b) The following groups are eligible for medical and health services covered under the New Jersey Medicaid Program when provided in conjunction with program requirements specifically outlined in the second chapter of each service manual. The groups are not all inclusive:

1. (No change.)
2. A person who qualifies under the Supplemental Security Income (SSI) Program as an "ineligible spouse" of an SSI recipient as determined by the Social Security Administration;
3. Persons who are eligible to receive financial assistance as determined by the county welfare agency. Such persons are:
 - i. Families with dependent children including children 18 to 21 years of age;
 - ii-iii. (No change.)
- 4.-6. (No change.)
7. Certain persons in State and county psychiatric hospitals and/or State schools for the developmentally disabled as determined eligible by the Department of Human Services;
8. (No change.)

(c) Medically Needy individuals are eligible for medical and health services covered under the New Jersey Medicaid Program with limitations as listed in N.J.A.C. 10:49-1.4. The services must be provided in conjunction with program requirements specifically outlined in the second chapter of each service manual.

1. Individuals are determined Medically Needy by the county welfare agency. They must meet the categorical eligibility requirements, have income and/or resources in excess of the categorical standards, and may have insufficient funds to meet their medical expenses. Medically Needy individuals must be in one of the following groups:

- i. Pregnant women,
 - ii. Needy children (under 21 years of age),
 - iii. The aged (65 years of age or older), the blind or the disabled.
2. There are special income and resource levels established for the Medically Needy. If an individual meets one of the above categories, and has income and/or resources above categorical program levels but less than or equal to the Medically Needy income and resource levels, he/she is eligible as Medically Needy. However, if an individual meets one of the above categories and meets the Medically Needy resource level, eligibility may be established through the "spend-down" process. "Spend-down" is the process whereby an individual may apply incurred medical expenses to offset income above the Medically Needy income level, and thereby adjust their income to meet the Medically Needy income limit. Medically Needy eligibility for all groups including the aged, blind and disabled will be determined by the county welfare agency or the board of social services for both the retroactive and prospective period.

3. Medically Needy applicants/recipients must reapply for benefits every six months. Eligibility may be established the first day of that six-month period or on any date during the six-month period that spend-down is met.

i. Eligibility should be verified by providers on each visit by reviewing the "Medicaid Eligibility Identification Card" (FD-73/178) (See N.J.A.C. 10:49-1.2(b)2.). For those cards issued for the month within the six month period in which the spend-down is met, the card will reflect the date that eligibility begins after the spend-down is met.

4. Claims for Medically Needy covered services provided during an eligible period may be submitted to the program for reimbursement using standard Medicaid procedures. Services provided prior to the effective date of eligibility are the client's liability, except for certain "special" claims.

i. "Special" claims are claims for Medically Needy covered services that were not used to meet the spend-down and were rendered between the first of the month in which eligibility is established and the date of eligibility that appears on the "Medicaid Eligibility Identification Card."

ii. The county welfare agency or board of social services will identify "special" claims which may be reimbursed under the program and will provide *[an authorization document]* ***a claim transmittal form*** (FD-311). Such claims must be submitted hard copy with the FD-311 attached.

(d) Newborn: Although both the mother and newborn infant may be eligible recipients on the date of delivery, the newborn infant is not immediately assigned a Person Number. In order to expedite payment to the practitioner and the hospital for inpatient hospital services rendered to a newborn during the mother's confinement, allowance has been made to reimburse providers using the mother's Health Services Program (Medicaid) Case Number and Person Number. When the mother is discharged from the hospital, services to the newborn may no longer be claimed by the practitioner and/or hospital under the mother's Person Number. The mother must contact the county welfare agency or board of social services to obtain a Person Number for the newborn. It is the duty of the practitioner or the hospital to contact the county welfare agency to obtain the newborn's Person Number for billing purposes.

(e) If a patient has not applied for benefits, is unable to pay for services rendered and appears to meet the requirements for eligibility for the New Jersey Medicaid Program, the provider should encourage the patient or his/her representative to apply for benefits through the county welfare agency or board of social services for either the Aid to Families with Dependent Children program or for the Medically Needy program, to the Social Security Administration for Supplemental Security Income Benefits, or in certain cases to the New Jersey Division of Youth and Family Services. The agency will process the application and notify the patient of the resulting determination.

1. A patient receiving services prior to the notification of eligibility should be informed that he/she is considered responsible for all charges incurred until proof of eligibility is verified. Once eligibility is verified, the provider may not bill the patient for any portion of the costs of allowable services rendered on or after the effective date of eligibility.

(f) Medicaid Retroactive Eligibility: Persons applying for Medicaid benefits will be asked if they have unpaid medical bills incurred within the three month period immediately prior to the month of application for Medicaid. Except for Medically Needy Applicants, persons indicating that they do have such bills may complete an "Application for Retroactive Medicaid Eligibility" (FD-74) and forward the application with all outstanding unpaid bills to the Medicaid Retroactive Eligibility Unit. An application for retroactive eligibility may be obtained by the applicant or his/her authorized agent from the county welfare agency, the Medicaid district office; the Social Security Administration district office or the Retroactive Eligibility Unit (Division of Medical Assistance and Health Services, CN 712-10, Trenton, New Jersey 08625). The application must be submitted within six months from the date of application for public assistance.

1. (No change.)

2. For Medically Needy persons, retroactive eligibility determinations will be completed by the county welfare agency or board of social services (see (c)4. above).

(g) It is in the best interest of the provider to review on each visit the eligibility of patients receiving continuing services. It is especially important to review the validation form on each visit when an extended plan of treatment has been authorized. There is no reimbursement for services performed after termination of eligibility other than by exceptional circumstances.

10:49-1.2 How to identify a covered person

All eligible persons as described below have an HSP (Medicaid) Case Number, which includes a two-digit individual Person Number. This identification number appears on the validation of eligibility form which must be presented to providers of services as proof of eligibility.

(a) An HSP (Medicaid) Case Number, as currently assigned, consists of twelve digits.

1. (No change.)

2. For an individual in a State or county institution, the first two digits of the HSP (Medicaid) Case Number reflect the institution where the individual resides.

i. State and county institutions:

09—Meadowview Hospital

31—Greystone Park Psychiatric Hospital

32—Senator Garrett W. Hagedorn Center for Geriatrics (in this instance the use of a 600,000 series number for digits 5 through 10 must also be used to identify the institution)

32—Trenton Psychiatric Hospital

33—Marlboro Psychiatric Hospital

34—Ancora Psychiatric Hospital/Ancora Developmental Center

35—North Princeton Developmental Center

36—Arthur Brisbane Child Development Center

37—Bergen Pines County Hospital

38—Essex County Psychiatric Geriatric Center

39—Camden County Psychiatric Hospital

41—Vineland Developmental Center

42—North Jersey Developmental Center

43—Greenbrook Regional Center

44—Woodbine Developmental Center

45—New Lisbon Developmental Center

46—E.R. Johnstone Developmental Center

47—Woodbridge Developmental Center

48—Hunterdon Developmental Center

90—Community/Special Residential Services (Family Care)

3. The third and fourth digits of the 12-digit HSP (Medicaid) Case Number designate the category under which a person is determined eligible for the New Jersey Medicaid Program.

10—Aged-SSI related (65 years of age or older)

15—Aged-Medically Needy related

20—Disabled-SSI related (under 65 years of age)

25—Disabled-Medically Needy related

30—Aid to Families with Dependent Children (AFDC)

35—AFDC-Medically Needy related

50—Blind-SSI related

55—Blind-Medically Needy related

60—Children in Foster Care

70—Medical Assistance for Aged—A New Jersey State Program

80—Refugee Program

4.-6. (No change.)

(b) There are four forms used for validation of eligibility: A New Jersey Medicaid provider may verify the client's Medicaid eligibility by means of the Department of Human Services "Medicaid-ID" (FD-152), "Medicaid Eligibility Identification Card" (FD-73/178), "DYFS 16-36", or "Validation of Eligibility" (FD-34).

1. (No change.)

2. "Medicaid Eligibility Identification Card" (MEI Card) (FD-73/178) (see Exhibit II for the regular Medicaid Program MEI Card and Exhibit V for the Medically Needy Program MEI Card at the end of this section): This card is issued monthly or quarterly depending on the basis of the recipient's eligibility. The MEI Card is issued monthly to individuals (aged, blind and disabled) determined by the Social Security Administration to be eligible for Supplemental Security Income (SSI), monthly to individuals in the Special Status Program (See v. below) and monthly to individuals determined by the county welfare agency or board of social services to be eligible in the Medically Needy Program (see vi. below). It is issued quarterly for Medicaid-eligible children under the supervision of the Division of Youth and Family Services (DYFS).

i. The MEI Card usually identifies eligibility for only one person; however, the Special Status Program identifies all eligible persons in the family and restrictions apply to all eligible persons listed on the MEI Card when issued as a Medicaid Special Status Card. Also, when the MEI Card is issued to the Medically Needy, more than one eligible person may be listed and a service code is indicated next to each name (see vi. below).

ii. The MEI Card is valid only when signed by the eligible person or his/her representative payee/legal guardian.

iii. The MEI Card includes an address, date of birth, Social Security Account Number and the availability of any third-party health insurance. However for the Medically Needy Program, the date of birth and Social Security Account Number are omitted and "Medically Needy" is printed in this space. If the Medicaid client has health insurance, the name of the other insurer will be printed together with a corresponding policy number. Additionally, the type of Medicare coverage (Part A, Part B or Part A and B) and the HIC (Medicare) Number will be included for all Medicare/Medicaid eligibles.

iv. The MEI Card will also indicate the cardholder's enrollment in any special programs (HMO, Medicaid Personal Physician Plan, Community Care Program for the Elderly and Disabled, and Special Status Program). (For information about these special programs see newsletters at the end of this Subchapter: For HMO-Newsletter #P-390/BC-279, dated June 1, 1984; for Medicaid Personal Physician Plan-Newsletter #P-362/BC-260, dated July 15, 1983; for Community Care Program for the Elderly and Disabled-Newsletter #P-371/BC-266 dated December 5, 1983.)

v. The "Special Status Program" restricts the Medicaid client to a single provider of pharmaceutical services. It is issued to clients determined by New Jersey Medicaid to have misused, abused or overused their Medicaid benefits. The name and address of the pharmacy to which the client is restricted will be printed on the top of the MEI Card. A recipient is permitted to change the designated provider every three months or sooner upon demonstration of good cause and may request a hearing if such a change is denied or unduly delayed or if the recipient otherwise objects to being included in the "Special Status Program". In an effort to discourage misuse or card lending in certain instances, a message will be printed on the card alerting the provider to ask the Medicaid client for additional identification.

vi. When the MEI Card is issued to recipients in the Medically Needy Program, the following message will be printed on the top of the card: "Medically Needy Eligible, Check Provider Manual for Authorized Services". It is important for the provider to always review the eligibility dates and to be aware that eligibility is not always established for an entire month. Also, a provider should always review the "service code" for each Medically Needy recipient. The service code will enable the provider to determine which services are available to each Medically Needy individual (see N.J.A.C. 10:49-1.4 for service exceptions). The service codes for the three groups under Medically Needy are:

- (1) Group A—Pregnant women,
- (2) Group B—Needy children,
- (3) Group C—Aged, blind and disabled.

3. (No change.)

4. "Validation of Eligibility" (FD-34) (See Exhibit III at the end of this section): This validation form identifies an individual who resides in a State or county institution.

i.iii. (No change.)

iv. The Medicaid Program has designated specific Medicaid district offices (see Appendix A for list of MDO's) to handle the prior authorization requests for services for patients/residents from each institution and the family care residents who are under the jurisdiction of the Division of Developmental Disabilities. If the patient/resident's HSP (Medicaid) Case Number begins with any of the following numbers, contact the Medicaid district office (MDO) indicated.

(1)-(12) (No change.)

Exhibits I-IV (No change.)

Exhibit V

MEDICAID ELIGIBILITY IDENTIFICATION CARD

State of New Jersey Department of Human Services Division of Medical Assistance and Health Services	MEDICALLY NEEDY ELIGIBLE CHECK PROVIDER MANUAL FOR AUTHORIZED SERVICES
Additional Health Insurance*	HSP (Medicaid) Case No. Person No.
ELIGIBLE PERSONS PN Service Code	Valid From To MEDICALLY NEEDY Soc. Sec. Acct. No. Date of Birth
	Name Street Address City, State Zip Code

Use this card when you
need medical services

.....
Recipient's Signature

FC-73/178
(Rev. 10/83)

IMPORTANT NOTICE: You must sign the front of this card on the line above the Recipient's Signature. If you are unable to sign the card, the individual representing you must sign your name, initial the card and explain his/her relationship to you.

Immediately notify the Medicaid District Office or the Division of Youth and Family Services case manager or the County Welfare Agency (as appropriate):

- 1. If you have Medicare Coverage or other health insurance not listed or incorrectly listed; or
- 2. If any changes are necessary to the front of this card; or
- 3. If you have any questions regarding the use of this card; or
- 4. If this card is lost or stolen. (Unless the report of the loss or theft can be documented as the appropriate agency, you may be liable to repay Medicaid for any benefits obtained through its unauthorized use.)

FEDERAL and STATE LAW make it a crime and set the punishment for persons who have been found guilty of making any false statement or representation of a material fact to receive any benefit or payment under the Medicaid Program. The Department of Human Services is required to make you aware of this law and to warn you against making any false statement in an application or in a fact used in determining the right to a benefit, or converting a benefit to the use of any person other than one for whom it was intended.

THIS CARD IS NON-TRANSFERABLE UNDER PENALTY OF LAW

NOTICE TO PROVIDERS:

The printed name which appears directly above the line for Recipient's Signature on this card is the MEDICAID eligible person. This name identifies that person ONLY (except AFDC can include spouse/child(ren) listed with PERSON NUMBERS) as being eligible for MEDICAID benefits within the time period shown.

If the name of a "REPRESENTATIVE PAYEE" appears on this card, that individual is not eligible for Medicaid benefits.

*Ask the cardholder if there is Medicare coverage or other health insurance not listed. Please indicate this information in the appropriate area on the claim form. You are to bill MEDICAID only AFTER receiving denial or partial payment from the other insurance company.

Delete the current text of 10:49-1.4 "Authorized services for covered persons" in its entirety and add the following:

10:49-1.4 Services covered by the New Jersey Medicaid Program

(a) New Jersey Medicaid individuals are eligible for covered services when the services are provided in conjunction with program requirements specifically outlined in the second chapter of each service manual; however, for Medically Needy individuals some Medicaid services are not available or are only available to certain eligible Medically Needy groups (see (b) below). Any limitations imposed will be consistent with the medical necessity of the patient's condition as determined by the attending physician or other practitioner and in accordance with standards generally recognized by health professionals and promulgated through the New Jersey Medicaid Program. The covered services listed below in alphabetical order are available to the regular Medicaid population:

- 1. Chiropractic services;
- 2. Christian Science Sanatoria care and services (See Hospital Services Manual);
- 3. Clinic services, including Mental Health, Family Planning and Dental Services (independent outpatient health care facilities other than hospital);
- 4. Dental services;
- 5. Early and Periodic Screening, Diagnosis and Treatment for individuals under age 21 (EPSDT): A periodic preventative health care program for persons under age 21 designed for early detection, diagnosis and treatment of correctable abnormalities. This program supplements the general medical services otherwise available.
- 6. Family Planning services;
- 7. Hearing Aid services;
- 8. Home Care services (Home Health Care and Personal Care Assistant services);

9. Hospital services—Inpatient
- i. Acute Care Hospitals.
 - ii. In institutions for mental diseases: Limited to persons age 65 or older and children 21 years of age and under.
10. Hospital services—Outpatient;
11. Laboratory (clinical) and Radiological services;
12. Long-Term Care services (Nursing Home-Skilled Nursing Facility, Intermediate Care Facility and Intermediate Care Facility for the Mentally Retarded);
13. Medical Day Care services;
14. Medical Supplies and Equipment;
15. Mental Health services;
16. Nurse-midwifery services;
17. Optometric services;
18. Pharmaceutical services;
19. Physician's services (M.D. and D.O.);
20. Podiatric services;
21. Prosthetic and Orthotic Devices;
22. Rehabilitative services (Payments are made to eligible Medicaid providers only. No payment is made to privately practicing therapists.):
- i. Physical therapy, as provided by a home health agency, independent clinic, long term care facility, or hospital outpatient department or in a physician's office.
 - ii. Occupational therapy, as provided by a home health agency, independent clinic, long term care facility, or hospital outpatient department.
 - iii. Speech-Language Pathology services, as provided by a home health agency, independent clinic, long term care facility, or hospital outpatient department.
 - iv. Audiology services provided in the office of a licensed specialist in otology or otolaryngology, or as part of an independent clinic or hospital outpatient services.
23. Transportation services which include ambulance and invalid coach service, or other transportation through the County Welfare Agency, when such service is not free and available in the community, and when use of any other method of transportation is medically contraindicated.
- (b) Regular Medicaid services are available to Medically Needy individuals except for the following services which are not available or are only available to certain eligible Medically Needy groups (See the service code next to the individual's name on the Medicaid Eligibility Identification Card to ascertain the Medically Needy group under which the individual's eligibility was established; i.e. Group A—pregnant women, Group B—needy children, and Group C—aged, blind and disabled.):
1. Chiropractic services are available only to pregnant women (Group A).
 2. EPSDT services are not available to any Medically Needy group.
 3. Hospital services (inpatient) are available only to pregnant women (Group A).
 4. Hospital services (outpatient) are not available to any Medically Needy group*[*]*, including same day surgery. This exclusion also applies to a satellite outpatient facility which is reimbursed according to a hospital outpatient reimbursement methodology.*
 5. Long-term care services are not available to any Medically Needy group.
 6. Medical day care services are available only to pregnant women, the aged, blind and the disabled (Groups A and C). *Medical day care services provided in a hospital-based facility are not available to any Medically Needy Group.*
 7. Pharmaceutical services are available only to pregnant women and needy children (Groups A and B).
 8. Podiatric services are available only to pregnant women, the aged, the blind and the disabled (Groups A and C).
 9. Rehabilitative services are not available for reimbursement when provided through a hospital or long-term care facility, except to pregnant women as part of their inpatient hospital services.

10:50 TRANSPORTATION SERVICES MANUAL

10:50-1.5 Basis of Payment

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

(g) If the patient is admitted to the hospital, the ambulance charges are billed as part of the inpatient hospital service. If a patient is not admitted, (see (j) below) the ambulance charge is billed as a hospital outpatient service. For recipients in the Medically Needy Program, ambulance charges are not available for reimbursement when provided through a hospital, except to pregnant women as part of their inpatient hospital services. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2).

(h)-(j) (No change.)

10:50-2.3 Patient identification

Verify that the patient is a Medicaid-eligible person at the time of each trip. Eligibility is verified by reviewing the patient validation form which is issued monthly. Individuals under the jurisdiction of the Division of Youth and Family Services (DYFS) are issued quarterly validation cards. It is especially important to review a patient's validation form on each trip when extended plans of treatment have been authorized. Prior authorization is no guarantee that an individual is covered.

10:51 PHARMACY MANUAL

10:51-1.2 Covered pharmaceutical services

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

(c) For recipients in the Medically Needy Program, pharmaceutical services are only available to pregnant women and dependent children. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)

10:51-1.14 Services not eligible for reimbursement

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

(c) For recipients in the Medically Needy Program, pharmaceutical services are not available to the aged, the blind or the disabled. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)

10:51-3.1 Introduction

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

(c) For recipients in the Medically Needy Program, pharmaceutical services are only available to pregnant women and needy children. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)

10:52 MANUAL FOR HOSPITAL SERVICES

10:52-1.2 Covered inpatient hospital services

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

(c) For recipients in the Medically Needy Program, inpatient hospital services are only available to pregnant women. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)

10:52-1.3 Noncovered inpatient hospital services

(a) (No change.)

(b) For recipients in the Medically Needy Program, inpatient hospital services are not available except to pregnant women. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)

10:52-1.6 Outpatient hospital services

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

(d) For recipients in the Medically Needy Program, outpatient hospital services are not available.

10:52-1.8 Noncovered outpatient hospital services

(a) Approved hospital outpatient department will not be reimbursed for any of the following:

1.-8. (No change.)

9. Services to recipients eligible under the Medically Needy Program.

10:52-1.19 Medical Day Care Centers (Hospital Affiliated)

(a) Medical Day Care as defined in N.J.A.C. 10:65-1.4 is a covered service when provided by a hospital affiliated facility. The Medical Day Care Center must provide the following basic services: nursing, medical, social, dietary, rehabilitation, transportation, recreation and personal care. Medical Day Care is not considered part of the Diagnosis Related Groups (DRG) experimental system for reimbursement purposes.

1.-3. (No change.)

4. For recipients in the Medically Needy Program, medical day care services are only available to pregnant women, the aged, the blind and the disabled. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)

10:53 MANUAL FOR SPECIAL HOSPITAL SERVICES

10:53-1.2 Covered inpatient hospital services

(a) (No change.)

(b) For recipients in the Medically Needy Program, inpatient hospital services are only available to pregnant women. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)

10:53-1.3 Noncovered inpatient special hospital services

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

(c) For recipients in the Medically Needy Program, inpatient hospital services are not available except to pregnant women. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)

10:53-1.5 Outpatient hospital services; general provisions

(a) (No change.)

(b) For recipients in the Medically Needy Program, outpatient hospital services are not available.

10:53-1.7 Noncovered outpatient special hospital services

(a) Approved hospital outpatient departments will not be reimbursed for any of the following:

1.-9. (No change.)

10. Services to recipients eligible under the Medically Needy Program.

10:53-1.15 Medical Day Care Centers (Hospital Affiliated)

(a) "Medical Day Care" as defined in N.J.A.C. 10:54-1.4 is a covered service when provided by a hospital affiliated facility. The Medical Day Care Center must provide the following basic services: nursing, medical, social, dietary, rehabilitation, transportation, recreation and personal care. Medical Day Care is not considered part of the Diagnosis Related Groups (DRG) experimental system for reimbursement purposes.

1.-3. (No change.)

4. For recipients in the Medically Needy Program, medical day care services are only available to pregnant women, and the aged, the blind and the disabled. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)

(b) (No change.)

10:54 MANUAL FOR PHYSICIAN'S SERVICES

10:54-1.4 Policies related to inpatient care

(a) (No change.)

(b) The New Jersey Medicaid Program recognized as a covered service medically necessary inpatient services which are provided in an approved private psychiatric hospital or psychiatric section of an approved general hospital with the following limitations (see 10:49-1.4(b) for the Medically Needy Program):

1.-5. (No change.)

(c) (No change.)

10:54-1.7 Physical medicine and rehabilitative services

(a) This section is concerned with rehabilitation services which includes physical therapy, occupational therapy, speech therapy, and other restorative services provided for the purpose of attaining maximum reduction of physical or mental disability and restoration of the patient to his best possible functional level. It does not include restorative/nursing procedures or physical therapy which is purely palliative, such as, the application of heat per se, in any form, massage, routine calisthenics or group exercises, assistance in any activity or use of a simple mechanical device not requiring the special skill of a qualified physical therapist. Rehabilitation services shall be made available to covered persons as an integral part of a comprehensive medical program. (See 10:49-1.4(b) for the Medically Needy Program.) Such services include not only intermittent or part-time service to the patient, but also instructions to responsible members of the family in follow-up procedures necessary for the care of the patient.

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

10:54-1.9 Policy on shoes

(a) (No change.)

(b) In the New Jersey Medicaid Program, orthopedic shoes are reimbursable under the following conditions (See 10:49-1.4(b) for the Medically Needy Program):

1.-3. (No change.)

10:54-1.10 Prescription policies

(a) This section is intended to describe the physician's responsibility in writing of prescriptions in order to maintain the traditional patient-prescriber-provider relationship and to insure the recipient free choice of provider. Physicians are urged to familiarize themselves with all aspects of this section in order to effect economics consistent with good medical practices and to facilitate prompt payment to the provider. (See 10:49-1.4(b) for the Medically Needy Program service limitations.)

1.-3. (No change.)

(b)-(i) (No change.)

10:55 PROSTHETIC AND ORTHOTIC SERVICES MANUAL

10:55-2.2 Patient identification

It should be verified that the patient is a covered person on the first visit and each visit thereafter. This is done by viewing the patient's validation form which is issued monthly. Individuals under the jurisdiction of the Division of Youth and Family Services (DYFS) are issued quarterly validation cards. It is especially important to review a patient's validation form on each visit when extended plans of treatment have been authorized. Prior authorization is no guarantee that an individual is covered.

10:56 MANUAL FOR DENTAL SERVICES

10:56-1.12 Place of service

(a) In addition to the private office, dental services may be provided in the home, a hospital, approved independent clinic, long-term care facility, and elsewhere. However, for recipients in the Medically Needy Program, hospital services and long-term care services are not available except inpatient hospital services to pregnant women. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)

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

10:56-2.1 Patient eligibility

(a) (No change.)

(b) Since eligibility is usually on a monthly basis and most dental treatment other than diagnostic and/or emergency procedures will usually extend for a longer period, it is possible that a patient could become ineligible during the course of treatment.

(c) (No change.)

10:57 PODIATRY SERVICES MANUAL

10:57-1.3 Scope of services

Podiatry care under the health services program is allowable to covered persons in such services are essential. Essential podiatry care includes those services which require the professional knowledge and skill of a licensed podiatrist. For recipients in the Medically Needy Program, podiatry care is only available to pregnant women, and the aged, the blind or disabled. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)

10:57-1.7 Hospital clinic services

All services rendered in the hospital clinic setting are considered hospital costs, including practitioners' services. For recipients in the Medically Needy Program, hospital services are not available except to pregnant women as part of their inpatient hospital services.

10:57-1.13 Prescription policies

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

(c) For recipients in the Medically Needy Program, Medicaid services are available with limitations (see 10:49-1.4(b)).

10:57-2.3 Patient identification

Verify that the patient is a covered person on the first visit and each visit thereafter. This is done by viewing the patient's validation form which is issued monthly. Individuals under the jurisdiction of the Division of Youth and Family Services (DYFS) are issued quarterly validation cards. It is especially important to review a patient's validation form on each visit when extended plans of treatment have been authorized. Prior authorization is no guarantee that an individual is covered. Authorization becomes invalid upon termination of eligibility.

10:59 MEDICAL SUPPLIER MANUAL

10:59-2.3 Patient identification

Verify that the patient is a covered person on the first visit and each visit thereafter, by viewing the patient's validation form which is issued monthly. Individuals under the jurisdiction of the Division of Youth and Family Services (DYFS) are issued quarterly validation cards. It is especially important to review a patient's validation form prior to billing when rentals have been authorized. Prior authorizations is no guarantee that an individual is covered.

10:61 INDEPENDENT LABORATORY SERVICES

10:61-2.2 Patient identification

Verification that the patient is a covered person shall be made on the first visit and each visit thereafter. This is done by viewing the patient's validation form which is issued monthly. Individuals under the jurisdiction of the Division of Youth and Family Services (DYFS) are issued quarterly validation cards. It is especially important to review a patient's validation form on each visit when extended plans of treatment have been authorized. Prior authorization is no guarantee that an individual is covered.

10:62 VISION CARE MANUAL

10:62-1.4 Providers of service

(a) Within the restrictions of their respective licensure, the following are eligible providers of eye care:

1.-4. (No change.)

5. Hospitals meeting the definition of "approved hospital" as described in N.J.A.C. 10:52-1.1. For recipients in the Medically Needy Program, hospital services are not available except to pregnant women as part of their inpatient hospital services. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)

10:62-3.3 Patient identification

- (a) (No change.)
- (b) This is done by viewing the patient's validation form which is issued monthly. Individuals under the jurisdiction of the Division of Youth and Family Services (DYFS) are issued quarterly validation cards.
- (c)-(e) (No change.)

10:63 LONG-TERM CARE SERVICES MANUAL

10:63-1.16 Admission policies

- (a) In the Medically Needy Program, long-term care services are not available to Medically Needy recipients.
- Recodify (a)-(i) as (b)-(j) (No change in text.)

10:63-2.1 Billing system concept and flow

- (a) (No change.)
- (b) In the Medically Needy Program, long-term care services are not available to Medically Needy recipients.

10:65 MEDICAL DAY CARE

10:65-1.2 Definitions

...
"Medicaid Eligibility" means in order to obtain Medical Day Care Services, the participant must be determined eligible to receive Medicaid services in the community under the existing programs of Aid to Families with Dependent Children, Supplemental Security Income, Medicaid Only and/or Medically Needy (For recipients in the Medically Needy Program, medical day care services are only available to pregnant women, and the aged, the blind and the disabled). (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)

10:65-2.5 Directory of Medicaid District Offices (MDO)

- (a) A list of Medicaid District Offices with addresses and telephone numbers can be found at N.J.A.C. 10:49-1 Appendix A.

1. (No change.)

10:66 INDEPENDENT CLINIC SERVICES

10:66-1.6 Scope of services

- (a) Licensed and approved independent clinics may, to the extent of their specialty, license and/or approved New Jersey Medicaid Provider Agreement, provide the following services (see 1.6(b) through (n)) when medically necessary. Procedure codes and maximum dollar allowance which correspond to allowable services are listed in subchapter 3 (N.J.A.C. 10:66-3).

1. Independent clinic services are available to Medically Needy individuals except for certain services listed in N.J.A.C. 10:49-1.4(b) which are not available or are only available to certain eligible Medically Needy groups.

2. For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2

(b) Examination and treatment rules are as follows.

1.-2. (No change.)

3. As a condition of continued participation in the New Jersey Medicaid Program, all licensed ambulatory care facilities providing primary care to adults and children, must provide, EPSDT service for persons in the regular Medicaid program.

i. EPSDT services are not available to recipients in the Medically Needy Program.

4. See N.J.A.C. 10:66-3 for procedure codes and reimbursement schedule.

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

(f) Medical day care rules are as follows.

1.-2. (No change.)

3. For recipients in the Medically Needy Program, medical day care services are only available to pregnant women, and the aged, blind and the disabled. (For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2)

(g)-(i) (No change.)

(j) Podiatry services rules are as follows.

1. Medically necessary podiatry services may be reimbursed when performed by a licensed podiatrist in an independent clinic, which is specifically approved to perform such services by the New Jersey Medicaid Program.

i. For recipients in the Medically Needy program, podiatric care is only available to pregnant women, and the aged, blind or disabled,

ii. For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2.

2. (No change.)

(k) (No change.)

(l) Rehabilitation services include physical therapy, occupational therapy, speech therapy and other restorative services provided for the purpose of attaining maximum reduction of physical or mental disability and restoration of the patient to his best functional level. It does not include physical therapy which is purely palliative, such as the application of heat per se, in any form; massage, routine calisthenics or group exercises; assistance in any activity; use of a simple mechanical device; or other services not requiring the special skill of a qualified physical therapist. Rehabilitation services shall be made available to eligible recipients as an integral part of a comprehensive medical program.

1. For recipients in the Medically Needy Program, rehabilitative services are not available when provided through a hospital or long-term care facility, except to pregnant women as part of their inpatient hospital services.

Recodify 1.-6. as 2.-7. (No change in text.)

(m) (No change.)

(n) Other services rules are as follows.

1.-4. (No change.)

5. (No change.)

i.-iii. (No change.)

iv. (No change in text.)

v. (No change in text.)

vi. (No change in text.)

10:67 MANUAL FOR PSYCHOLOGICAL SERVICES

10:67-2.3 Patient identification

Verify that the patient is a covered person on the first visit and each visit thereafter. This is done by viewing the patient's validation form which is issued monthly. Individuals under the jurisdiction of the Division of Youth and Family Services (DYFS) are issued quarterly validation cards. It is especially important to review a patient's validation form on each visit when extended plans of treatment have been authorized. Prior authorization is no guarantee that an individual is covered. Authorization becomes invalid upon termination of eligibility.

10:68 MANUAL FOR CHIROPRACTIC SERVICES

10:68-1.2 Scope of services available to recipients

(a) Payment will be made for the necessary services ordered by a chiropractor subject to the following limitations (For recipients in the Medically Needy Program, chiropractic services are only available to pregnant women. For information on how to identify a covered person, please refer to N.J.A.C. 10:49-1.2):

1.-4. (No change.)

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

(a)

**Independent Laboratory Services
Billing Procedures**

Adopted Amendments: N.J.A.C. 10:61-2.1 and 2.5

Proposed: March 17, 1986 at 18 N.J.R. 540(a).

Adopted: May 22, 1986 by Geoffrey S. Perselay, Acting
Commissioner, Department of Human Services.

Filed: May 22, 1986, as R.1986 d.219, **without change.**

Authority: N.J.S.A. 30:4D-6a(3), 7, 7a, 7b; 42 CFR 440.30.

Effective Date: June 16, 1986.

Expiration Date: June 16, 1986.

Summary of Public Comments and Agency Responses:

No comments received.

Summary of Changes between proposal and Adoption:

This rulemaking was originally published as a proposal to readopt N.J.A.C. 10:61-1 and 2, which are the General Provision Subchapter and the Billing Procedures Subchapter of the Independent Laboratory Services Manual. However, the readoption of the entire Independent Laboratory Services Manual is not due until March 3, 1991 as a result of rules recently adopted by the Office of Administrative Law (see 18 N.J.R. 469(a)). Therefore, this rulemaking simply reflects adoption of the amendments to N.J.A.C. 10:61-2.1 and 2.5.

Full text of the adoption follows.

10:61-2.1 General policy

Claims and follow-up inquiries must be submitted within the time

frames for non-institutional providers as set forth at N.J.A.C. 10:49-1.12.

10:61-2.5 Report of services

(a) Rules on report of services are:

1. Enter date(s) of each procedure;
2. Enter procedure code and/or narrative;
3. Independent laboratories must identify procedures by use of codes which are described in the manual appendix furnished to those eligible to provide such services;
4. Enter charge for each procedure.

(b) (No change in text.)

(c) Where tests are referred to an approved laboratory by another laboratory, the actual charges by the reference laboratory must be indicated on the MC-13AC2.

(d) In the case where the reference laboratory performs billing, it should do so by submitting bills directly to the Prudential Insurance Company.

(e) When the service laboratory elects to bill for procedures done by the reference laboratory, a note indicating "Performed by reference lab" (name of laboratory) must accompany the identifying tests or procedures in item 11c of the independent laboratory claim form MC-13AC2.

(a)

**Independent Clinic Services Manual
Billing Procedures**

Adopted Amendments: N.J.A.C. 10:66-2.2 and 2.3

Proposed: March 17, 1986 at 18 N.J.R. 541(a).

Adopted: May 22, 1986 by Geoffrey S. Perselay, Acting
Commissioner, Department of Human Services.

Filed: May 22, 1986, as R.1986 d.220, **without change.**

Authority: N.J.S.A. 30:4D-6b(3), 7, 7a, 7b; 42 CFR 440.90.

Effective Date: June 16, 1986.

Expiration Date: December 15, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Summary of Changes between Proposal and Adoption:

This rulemaking was originally published as a proposal to readopt N.J.A.C. 10:66-2 and 3, which are the Billing Procedures Subchapter and Procedure Codes Subchapter of the Independent Clinic Services Manual. However, the readoption of the entire Independent Clinic Services Manual (N.J.A.C. 10:66) is not due until December 15, 1988 as a result of rules recently adopted by the Office of Administrative Law (see 18 N.J.R. 469(a)). Therefore, this rulemaking simply reflects adoption of the amendments to N.J.A.C. 10:66-2.2 and 2.3.

Full text of the adoption follows.

10:66-2.2 Policy concerning claim submittal and follow-up inquiries

Providers of independent clinic services must submit all claims and follow-up inquiries within the time periods for non-institutional providers which appears at N.J.A.C. 10:49-1.12.

10:66-2.3 Prior authorization

(a) Items or services requiring prior authorization should not be provided until the authorization is received.

(b) Requests for prior authorization are to be made to the local Medicaid office serving the county wherein the recipient resides (see N.J.A.C. 10:66-1.22 for the office listing), except as follows:

1. Dental service requests must be submitted to:

Dental Claims Review Unit
CN-713
Trenton, N.J. 08625

2.-3. (No change.)

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

(b)

**Medically Needy Supplement
Introduction, Case Processing, Non-Financial
Eligibility Factors, Income and Resource
Eligibility, Medical Spend-Down, and Other
Administrative Requirements**

Adopted New Rules: N.J.A.C. 10:70

Proposed: April 21, 1986 at 18 N.J.R. 831(a).

Adopted: May 23, 1986 by Geoffrey S. Perselay, Acting
Commissioner, Department of Human Services.

Filed: May 23, 1986 as R.1986 d.237, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4D-3i(8)6g, 7, a, b, c; 1902(a)(10) of the
Social Security Act; 42 CFR 435 Subpart D.

Effective Date: June 16, 1986.

Operative Date: July 1, 1986.

Expiration Date: June 16, 1991.

Summary of Public Comments and Agency Responses:

There were comments submitted by the Burlington County Welfare Board, the Sussex County Welfare Board, and the Division on Aging within the Department of Community Affairs.

Thomas J. Murphy, Director, Burlington County Welfare Board, was concerned with issues that were primarily administrative. For example, there were questions regarding applications on behalf of children, transfer of cases between counties, redeterminations, and determinations of disability and blindness currently done by the Medical Review Team at the Division of Public Welfare.

Samuel C. Seamans, Interim Director of Welfare, Sussex County Welfare Board, was concerned that the restrictions on distributing certain information mentioned in N.J.A.C. 10:70-1.6(b) might prevent them from issuing their monthly newsletter. Mr. Seamans also requested the manual distinguish between those persons the County Welfare Board would serve due to legislation and those persons that would be served due to contract.

Ann Zahora, Director, Division on Aging within the Department of Community Affairs, requested that satellite stations be established to make it easier for persons who are disabled or elderly to file an application. The suggested locations included County Offices on Aging.

The Division of Medical Assistance and Health Services wishes to review the commentators concerns in more detail prior to making any changes in the text of the rule.

Summary of Changes between Proposal and Adoption:

The Division of Medical Assistance and Health Services, on its own initiative, is amending the rule upon adoption. The changes pertain to SSI-related children under the age of 21 and their parents. N.J.A.C. 10:70-3.5(c) has been amended to indicate that children are viewed as individuals and their countable income must be compared to the Medically Needy Income Level (MNIL) for one person, rather than 2 or 3 persons, as was indicated in the proposal. It should be noted that the same disabled child could apply for Medicaid coverage under the categorical assistance program as an AFDC-C (Aid to Families with Dependent Children) related child, and have his/her parent(s) included in the budget unit. The proposal indicated that parental income would be deemed available to the SSI-related child. The rule is being amended to indicate deeming will apply to children under the age of 18 (N.J.A.C. 10:70-3.5(c) and N.J.A.C. 10:70-4.6(d)).

The proposal indicated parental resources were also deemed available to the SSI-related child less a deduction equal to the Medically Needy resource level for one or two persons dependent on the number of parents. N.J.A.C. 10:70-5.3(b) is being amended to indicate the resource deduction will be the Medicaid Only resource limit, as applicable, rather than the Medically Needy program resource limits.

These changes were necessary to conform as closely as possible with the SSI methodology for determining eligibility for children who are classified as blind or disabled.

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

CHAPTER 70
MEDICALLY NEEDED PROGRAM

SUBCHAPTER 1. INTRODUCTION

10:70-1.1 Program scope

(a) The Medically Needed Program, enacted by P.L. 1985, Chapter 371, extends limited Medicaid program benefits to certain groups of medically needy persons whose income and/or resources exceeds the standards for the Medicaid program but are within the standards for the Medically Needed Program, or whose income exceeds the standards for the Medically Needed Program but is insufficient to meet their medical expenses as determined in this chapter.

(b) Eligibility for the Medically Needed Program is limited to the following eligibility groups within the family and adult eligibility categories:

1. AFDC-related:

- i. Pregnant women; and
- ii. Children under 21 years of age.

2. SSI-related:

- i. Persons 65 years of age or older;
- ii. Persons who are blind; and
- iii. Persons who are disabled.

(c) The medical services covered under the Medically Needed Program are limited by eligibility group and by the spend-down provisions of subchapter 6. All restrictions and limitations on services applicable to the Medicaid program apply to services for the Medically Needed. The services covered under the Medically Needed Program (by eligibility group) are described in N.J.A.C. 10:49-1.4(b).

(d) Retroactive eligibility for the Medically Needed Program is available beginning with the third month prior to the month of application, if members of an eligibility group have incurred expenses for covered services within that period which have not yet been paid and the members would have been eligible for the Medically Needed coverage in the month in which the services were received. Members of the eligibility group need not be eligible for the program at the time of application in order to be eligible for retroactive eligibility. Application for retroactive eligibility may be made on behalf of a deceased person so long as the person was alive during a portion of the retroactive eligibility period and he or she incurred medical expenses for covered services.

1. Retroactive coverage is not available for any period prior to July 1, 1986, the effective date of the Medically Needed Program.

10:70-1.2 Purpose of the Medically Needed Manual

(a) Purpose of the regulations contained within this chapter is to:

1. Set forth eligibility for the Medically Needed Program;
2. Establish policy for calculating spend-down liability for persons whose income exceeds the Medically Needed Income Level; and
3. Specify the rights and responsibilities of program applicants and eligible persons.

(b) Circumstances which are neither specifically nor generally addressed in these regulations shall be referred to designated staff of the Division of Medical Assistance and Health Services for resolution.

(c) The director of the county welfare agency shall assign copies of this manual to administrative staff, all Medically Needed Program staff working with applicants and recipients, and to social services staff as appropriate and shall ensure that each staff member is thoroughly familiar with its contents in order to apply the required policy and procedures consistently.

(d) The Division of Medical Assistance and Health Services will issue revisions to the Manual as necessary. It is the responsibility of each holder of the Manual to maintain its accuracy by inserting new material and removing obsolete pages promptly.

1. At least one administrative copy of all obsolete pages of the Manual must be maintained by the county welfare agency.

(e) This manual is a public document. It is important that all copies in use be absolutely accurate and up-to-date. The manual is available as follows:

1. Copies are available in the State office of the Division of Medical Assistance and Health Services and in each county welfare agency office for examination or review during regular office hours.

2. Specific policy material necessary for an applicant or recipient or his or her representative to determine whether a fair hearing is to be requested or to prepare for a fair hearing shall be provided to such persons without charge.

3. All public and university libraries which have agreed to keep the manual up-to-date will have a copy available under their regulations.

4. Each legal services office will be furnished with a copy of this manual.

5. Welfare, social service, and other nonprofit organizations will be furnished with a copy of this manual at no cost upon an official written request on agency letterhead to the Division of Medical Assistance and Health Services.

6. A current up-to-date copy of the manual or any part of it is available from the Division of Medical Assistance and Health Services at the cost of printing and mailing to anyone who requests it in writing.

10:70-1.3 Administrative organization

The Medically Needed Program is administered by the county welfare agencies under the supervision of the Division of Medical Assistance and Health Services of the Department of Human Services.

10:70-1.4 Principles of administration

(a) The following principles of administration apply in the Medically Needed Program.

1. Any individual who believes he or she is eligible shall be afforded an opportunity to make application (or reapplication) for the Medically Needed Program without delay.

2. Program applicants or eligible persons are the primary source of information concerning program eligibility and spend-down liability. The county welfare agency shall, when necessary, in the process of determining eligibility and spend-down liability, use secondary sources of information with the knowledge and consent of the applicant or eligible person.

3. There shall be strict adherence to law and complete conformity with regulations and administrative policy. Requirements other than those established by law or regulation shall not be imposed as a condition of receiving assistance under the Medically Needed Program.

10:70-1.5 Confidentiality of information

(a) No member, officer, or employee of the county welfare agency shall produce or disclose any confidential information to any person, except as authorized below.

1. Information considered confidential includes, but is not limited to, the following:

- i. Names and addresses;
- ii. Medical services provided;
- iii. Social and economic conditions or circumstances;
- iv. County welfare agency evaluation of personal information; and
- v. Medical data, including diagnosis and past history of disease or disability.

2. The county welfare agency may disclose information concerning an applicant or eligible person to persons and agencies directly related to the administration of Medicaid, including the Medically Needed Program. Persons and agencies directly related to program administration are those that are properly authorized to be involved in the:

- i. Establishment of eligibility;
- ii. Determination of the amount and scope of medical assistance;
- iii. Provision of services for recipients; and
- iv. Conduct or assisting in the conduct of an investigation, prosecution, or civil or criminal proceeding related to the Medically Needed Program.

3. The county agency may release information whenever the applicant or eligible person waives confidentiality, but only to the extent authorized by the waiver.

4. If a court issues a subpoena for a case record or any other confidential information or for any agency representative to testify concerning an applicant or eligible person, the county welfare agency, personally or through counsel, shall make a statement substantially as follows:

i. "Under provisions of the Social Security Act, information concerning applicants and recipients of Medical Assistance must be restricted to persons directly connected with the administration of such assistance. The authorities of the Federal government have advised that this includes a requirement of nondisclosure of such information in response to a subpoena. If a disclosure is made of this information, either by personal testimony or by production of records, this is considered nonconformance with Federal requirements and may subject the State to loss of Federal financial participation in the Medical Assistance program."

5. In no instance is it intended that any officer or employee of the agency place him or herself in contempt of court through refusal to follow the orders of a court. However, the above action as appropriate shall be taken in all instances, and a report of the results shall be entered in the case record.

6. Pertinent information and records may be released in conjunction with an administrative hearing conducted by the Office of Administrative Law regarding action or inaction by the county welfare agency affecting

an applicant's or eligible person's eligibility or entitlement under the Medically Needy Program.

10:70-1.6 Materials distributed to program applicants or eligible persons

- (a) All materials distributed to applicants or eligible persons must:
1. Directly relate to the administration of the Medicaid program;
 2. Have no political implications;
 3. Contain names only of individuals directly connected with the administration of the Medicaid program; and
 4. Identify those individuals only in their official capacity with the State or the county welfare agency.

(b) The county welfare agency must not distribute materials such as "holiday" greetings, general public announcements, voting information, or alien registration notices.

(c) The county welfare agency may distribute materials directly related to the health and welfare of program applicants and eligible persons, such as announcements of free medical examinations, availability of surplus food, and consumer protection information.

10:70-1.7 Nondiscrimination

(a) Title VI of the Federal Civil Rights Act of 1964 (Public Law 88-352) and Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the ground of race, color, national origin, or handicap in the administration of any program for which Federal funds are received. Strict compliance with the provisions of this Act and any regulations based thereon is required as a condition of eligibility to receive Federal funds for assistance programs administered through the county welfare agencies. These principles apply to the Medically Needy Program in New Jersey.

1. The county welfare agency shall inform all staff members of their obligations in regard to Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

2. All persons seeking medical assistance shall be informed of Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

3. All persons seeking or receiving medical assistance shall be afforded an opportunity to file a complaint alleging discrimination on the ground of race, color, national origin, or handicap. Such complaints may be filed directly with the Regional Manager, U.S. Department of Health and Human Services, Office of Civil Rights, Federal Plaza, New York, New York 10007, or with the Director, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625.

4. In any instance in which a complaint of alleged discrimination is filed with a State or county agency, the complaint shall be forwarded immediately to the Director, Division of Medical Assistance and Health Services. The Director, upon receipt of any such complaint, will take whatever action he or she deems appropriate to the situation. This action may include, but is not limited to, the securing of reports from whatever sources may have knowledge pertinent to the situation and referral to the Division of Civil Rights of the New Jersey Department of Law and Public Safety, for investigation, evaluation, and recommendation by that agency.

5. The county welfare agency shall afford full cooperation in the investigation of complaints of discrimination as may be requested by the Federal Department of Health and Human Services, the Division of Medical Assistance and Health Services, or the Division of Civil Rights.

6. The Director, Division of Medical Assistance and Health Services, will be responsible for all final determinations as to whether or not the fact of discrimination has been established and for all decisions as to the disposition of the complaint. In arriving at such determinations, the Director will take into consideration relevant decisions or actions on the part of a court or governmental agency.

7. Each county welfare agency shall comply with the decision of the Director of the Division of Medical Assistance and Health Services on any complaint of discrimination, including the imposition of disciplinary action as found necessary and reasonable in the case of discrimination by a staff member.

10:70-1.8 Assignment of medical support rights

(a) Any person who applies for the Medically Needy Program, by virtue of the application for benefits, is deemed to have assigned to the Commissioner of the Department of Human Services any rights to support for the purpose of medical care as determined by a court or administrative order and any rights to payment for care from any third party. It is required that program applicants and recipients cooperate in the identification of and the obtaining of any such rights.

1. The county welfare agency shall advise applicants and recipients of the terms of the assignment and the consequences thereto.

SUBCHAPTER 2. CASE PROCESSING

10:70-2.1 Application

(a) Application for the Medically Needy Program shall be accomplished by the completion and signing of Form PA-1G for SSI-related cases and Form PA-1J for AFDC-related cases, as well as, any addenda to those forms as prescribed by the Division of Medical Assistance and Health Services.

1. Application for the Program shall be executed by:
- i. A parent, caretaker relative, or guardian for cases with children under the age of 21 residing with a parent or caretaker relative;
 - ii. A child age 18 or older when not residing with a parent or caretaker relative;
 - iii. A pregnant woman age 18 or older;
 - iv. The parent or caretaker relative of a disabled or blind child;
 - v. The adult seeking benefits as aged, blind, or disabled.
2. For cases which, because of confinement, illness, incapacity, disability, or lack of competence of the person(s) required to execute the application, and for children who not yet attained the age of 18, the application may be executed on such person's behalf by:
- i. A relative by blood or marriage;
 - ii. A staff member of a public or private welfare agency of which the person seeking program benefits is a client, who has been designated by the agency to so act;
 - iii. The attorney or physician of the person seeking program benefits;
 - iv. A staff member of an institution or facility in which the person is receiving care, who has been designated by the institutional facility to so act.

3. A legal guardian shall be recognized as an authorized agent to initiate an application for the Medically Needy Program.

(b) The county welfare agency, under policies and procedures established by the Division of Medical Assistance and Health Services, has the direct responsibility in the application process to:

1. Inform applicants of the purpose and the eligibility requirements for the Medically Needy Program, their rights and responsibilities under the Program, and of their right to a fair hearing;
2. Receive applications and review them for completeness, consistency, and reasonableness;
3. Assist program applicants in exploring their eligibility for program benefits;
4. Make known to program applicants, the appropriate resources and services both within the agency and the community;
5. Assure the prompt and accurate submission of eligibility data to the Medicaid Status File for eligible persons and prompt notification to ineligible persons of the reasons for their ineligibility.

(c) As part of the application process, the program applicant has the responsibility to:

1. Complete, with assistance from the county welfare agency as needed, any forms required as part of the application process;
2. Assist the county welfare agency in securing evidence that verifies or corroborates his or her statements;
3. Report any change in circumstances that may affect program eligibility or amount of benefits;
4. Provide the county welfare agency evidence, as requested, of incurred medical expenses and liability for payment;
5. If applicable, submit to examinations or tests and provide such medical and other evidence as may be necessary to determine disability or blindness.

(d) With the exceptions noted below, disposition of an application for the Medically Needy Program must be accomplished within 30 days of the date of application (or the date of the inquiry form PA-1C, if applicable) for AFDC-related cases and for persons applying on the basis of being aged. The disposition standard for the disabled and blind is 60 days from the date of application (or the date of the inquiry form PA-1C, if applicable).

1. "Disposition of the application" means the official determination by the county welfare agency of application approval or rejection.
2. Disposition of the application may exceed the processing standards when substantially reliable evidence of eligibility or entitlement is lacking at the end of the processing period. In such circumstances, the application may be continued in pending status. The county welfare agency shall document that the delay in application processing resulted from one of the following:
 - i. Circumstances wholly within the applicant's control;
 - ii. A determination to afford the applicant, whose evidence of eligibility or entitlement is inconclusive, additional time to provide sufficient evidence of eligibility before final action on his or her application;

iii. An administrative or other emergency that could not reasonably be avoided; or

iv. Circumstances wholly outside the control of both the applicant and the county welfare agency.

3. When application processing is delayed beyond the processing standards, the county welfare agency shall provide to the program applicant written notification prior to the expiration of the processing period setting forth the specific reasons for the delay.

4. Each county welfare agency director shall establish appropriate operational controls to expedite the processing of applications and assure maximum compliance with the processing standards.

i. The county welfare agency will maintain control records which will identify all pending applications which did not meet the processing standards and the reason therefore. That record shall be adequate to make possible the preparation of reports of such information as may be requested by the Division of Medical Assistance and Health Services.

(e) The following actions on an application qualify as disposition of an application for purposes of the processing standards:

1. Approved: The applicant(s) has been determined eligible for participation in the Medically Needy Program;

2. Denied: The applicant(s) has been determined ineligible for participation in the Medically Needy Program;

3. Eligible pending spend-down: The applicant(s) is eligible for participation in the Medically Needy Program in all respects except that the countable income of the budget unit exceeds the medically needy income levels. Eligibility for program benefits may be established through medical spend-downs (see subchapter 6);

4. Dismissed: A decision by the county welfare agency that the application process need not be completed because:

i. The death of the applicant(s) (the application process must be completed if there are unpaid medical bills for covered services incurred in either the retroactive coverage period or subsequent to program application or inquiry);

ii. The applicant(s) cannot be located;

iii. The application was registered in error;

iv. The applicant(s) moved out of the State during the application process (see N.J.A.C. 10:70-2.4 for a move to another county within the State during the application process).

5. Withdrawn: The applicant(s) request that eligibility for the Medically Needy Program not be considered further.

(f) The county welfare agency is required by law (N.J.S.A. 30:6-1) to report to the Department of Human Services, Commission for the Blind and Visually Impaired, every individual coming to its attention who is known to be, or is believed likely to become, permanently blind. Such information shall be reported on a form prescribed by the Commission.

10:70-2.2 Interview

A personal face-to-face interview with the program applicant(s) or the authorized agent is required as part of the process of determining program eligibility.

10:70-2.3 Collateral verification

(a) Collateral verification is the use of third-party information (both documentary and nondocumentary) from agencies or individuals other than members of the applicant's household to substantiate the accuracy of statements made on the application and during the interview.

1. Program applicants have the primary responsibility for providing verification of factors of eligibility. If it would be difficult or impossible for the applicants to provide necessary verification in a timely manner, the county welfare agency shall provide assistance in obtaining the evidence.

2. In the absence of credible verification of all eligibility factors, eligibility for the Medically Needy Program may not be established.

10:70-2.4 Case transfer

(a) When individuals move permanently to another county within the State, responsibility for the case shall be transferred in accordance with the provisions of this section. The case transfer shall be accomplished in a manner so not to adversely affect the rights of any individual to program entitlement. In a case transfer, the existing eligibility period, as established by the county of origin, does not change.

1. A temporary visit out-of-county shall not be considered to be a change of county residence until the visit has continued for longer than three calendar months.

(b) 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 (c) and (d) below.

(c) For persons who move from the county in which application for the Medically Needy Program is made prior to a determination of eligibility or ineligibility:

1. The county in which the application was made has the responsibility to:

i. Complete the eligibility determination process;

ii. If determined eligible for the Program, add the eligible persons to the Medicaid Status File (MSF) with the correct effective date of Medically Needy eligibility and the new address (in the receiving county); and

iii. If the case is determined eligible, within five working days of the eligibility determination, transfer the case record material to the receiving county in accordance with (e)1.i. through iv. below.

2. The receiving county has the responsibility to:

i. Communicate promptly with the client and/or the client's authorized agent upon receipt of the case material to advise of continued program entitlement or when the case has been determined eligible pending spend-down, to advise that the client should report to the receiving county upon achieving spend-down liability; and

ii. Immediately notify the county of origin, in writing, of the date the case material was received.

(d) For cases which are eligible for the Medically Needy Program and those which have been determined eligible pending spend-down:

1. 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 application form (including all verification), Social Security numbers, the new address in the receiving county, and, if applicable, all necessary spend-down information.

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 i. or iii. above.

2. 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;

ii. Immediately notify the county of origin, in writing, of the date the initial case material was received;

iii. Review eligibility for the case. If questions regarding case eligibility exist because of information provided by the county of origin, that county shall be consulted for resolution of the issues;

iv. Accept responsibility for the case (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. Accept responsibility for the case (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), as necessary. If the case is determined eligible for Medically Needy in the receiving county, there shall be no interruption of entitlement. If the case is determined ineligible for Medically Needy in the receiving county, eligibility shall be terminated, subject to timely and adequate notice, and the previously eligible persons deleted from the MSF; and

vii. Notify the county of origin of the date eligibility for Medically Needy will begin or will be terminated in the receiving county;

(e) Any case for which the transfer procedures in (b) through (d) 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 Medical Assistance and Health Services by letter, setting forth the pertinent available facts.

10:70-2.5 Redetermination of eligibility

(a) Eligibility for the Medically Needy Program shall be redetermined as follows:

1. When required, on the basis of information the county welfare agency has obtained previously about anticipated changes in the case situation, or when additional information is necessary to adjust the best estimate of income when such income is subject to significant fluctuation;

2. Promptly, after information is obtained by the county welfare agency which indicates changes in the case circumstances that may affect program eligibility or the amount of benefits received under the Program;

3. For cases not subject to medical spend-down, a full redetermination of program eligibility, no later than six months from the date eligibility

was first established or from the date of the last full redetermination;

4. For cases subject to spend-down, a full redetermination of program eligibility, by the completion of the current prospective six-month budget period.

(b) For redeterminations of eligibility required by (a)1 and 2 above, the completion of a new application form and a face-to-face interview are required only if, on the basis of the information obtained, in conjunction with existing case information, the county welfare agency is unable to arrive at a decision regarding eligibility or ineligibility.

(c) Full redeterminations of eligibility ((a)3 and 4 above) require the completion of a new application form and a face-to-face interview. All factors of eligibility subject to change (with the exception of disability and blindness factors; see N.J.A.C. 10:70-2.6) must be verified or re-verified.

(d) The responsibilities of the client(s) in the process of eligibility redetermination are the same as those delineated for program applicants at N.J.A.C. 10:70-2.1(c).

10:70-2.6 Redetermination of medical factors

(a) Except for persons receiving Social Security benefits as a result of disability or blindness, the factors of disability and blindness will be redetermined at intervals established by the Division of Public Welfare, Bureau of Medical Affairs.

(b) Any person whose eligibility for the Program is based on a determination of disability or blindness is required to submit to examinations or tests and provide medical and other evidence necessary for the purpose of determining continued disability or blindness.

10:70-2.7 Post-application client responsibilities

(a) Upon a determination of eligibility for the Medically Needy Program, members of the eligibility group (or their authorized agent) have on-going responsibility for the reporting of changes in circumstances and the provision of information as delineated at N.J.S.A. 10:70-2.1(c). Further, as requested by the county welfare agency during the eligibility period, additional or updated information must be provided. At any time the county agency lacks sufficient information to confirm continuing program eligibility because of the unwillingness of the eligibility group to provide necessary information, the agency shall commence action to terminate the case.

SUBCHAPTER 3. NONFINANCIAL ELIGIBILITY FACTORS

10:70-3.1 General provisions

(a) Eligibility must be established in relation to each legal requirement of the Medically Needy Program to provide a valid basis for granting or denying medical assistance.

(b) The applicant's statements regarding his or her eligibility, as set forth in application form, are evidence. The statements must be consistent and meet prudent tests of credibility. Incomplete or questionable statements shall be supplemented and substantiated by corroborative evidence from other pertinent sources, either documentary or nondocumentary.

1. Documentary sources of evidence present factual information recorded at some previous date by a disinterested party and filed as part of a record. Examples: certificates, legal papers, insurance policies, licenses, bills, receipts, notices of RSDI benefits, and so forth.

2. Nondocumentary sources of evidence are factual oral statements, which appear to be reliable, made by individuals based on their observation and personal knowledge of applicant's circumstances.

10:70-3.2 Citizenship

(a) In order to be eligible for the Medically Needy Program, an individual must be a citizen of the United States or an alien lawfully admitted for permanent residence or permanently residing in the United States under color of law.

1. The term "citizen of the United States" includes person born in Puerto Rico, Guam, the Virgin Islands, Swains Island, American Samoa, and the Northern Mariana Islands.

2. The following aliens shall be considered lawfully admitted for permanent residence for purposes of establishing eligibility for the Medically Needy Program:

i. An alien lawfully admitted for permanent residence as an immigrant pursuant to sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act;

ii. An alien who entered the United States prior to June 30, 1948, or some later date as required by law, and has continuously maintained residency in the United States since then, and is not eligible for citizenship but is considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the United States Attorney General pursuant to section 249 of the Immigration and Nationality Act;

iii. An alien qualified for conditional entry after March 31, 1980 because of persecution or fear of persecution on account of race, religion, or political opinion pursuant to section 207 (formerly section 203(a)(7)) of the Immigration and Nationality Act;

iv. An alien who qualifies for conditional entry prior to April 1, 1980 pursuant to former section 203(1)(7) of the Immigration and Nationality Act;

v. An alien granted asylum through an exercise of discretion by the United States Attorney General pursuant section 208 of the Immigration and Nationality Act;

vi. An alien lawfully present in the United States as a result of an exercise of discretion by the United States Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act, or as a grant of parole by the United States Attorney General; and

vii. An alien living within the United States to whom the United States Attorney General has withheld deportation pursuant to section 243 of the Immigration and Nationality Act because of the judgment of the United States Attorney General that the alien would otherwise be subject to persecution on account of race, religion, or political opinion.

10:70-3.3 Residency

(a) In order to be eligible for the Medically Needy Program, an individual must be a resident of the State of New Jersey. State residence shall be determined in accordance with the regulations at N.J.A.C. 10:94-3.5, 3.7, and 3.8.

10:70-3.4 Eligibility group criteria

(a) Eligibility for the Medically Needy Program is limited to groups of persons within two specified eligibility categories. An individual must meet the definition of one of the categories below to be eligible for the Medically Needy Program.

(b) AFDC-related: The following eligibility groups are within the AFDC-related eligibility category:

1. Pregnant women: Needy women of any age during the term of a medically verified pregnancy.

2. Children under the age of 21: Needy children under the age of 21.
i. Children under the age of 21 may be eligible regardless of: Parental deprivation; school attendance; emancipation; residence with parent(s) or other caretaker relative(s); or Work Incentive program (WIN) or other AFDC employment or training requirements.

ii. A child may be eligible for program benefits when temporarily absent from his or her family in accordance with the provisions of N.J.A.C. 10:81-3.32 through 3.34.

(c) SSI-related: The following eligibility groups are within the SSI-related eligibility category:

1. Aged: Needy persons aged 65 years of age or older.

2. Blind: Needy persons who are statutorily blind. Statutory blindness is central visual acuity of 20/200 or less in the better eye with the use of correcting lens. An eye which has a limitation in the field of vision so that the widest diameter of the visual field subtends at an angle no greater than 20 degrees is considered to have a central visual acuity of 20/200 or less.

i. Persons who are receiving Social Security disability benefits as a result of blindness are presumed to be blind for purposes of this program.

ii. Except for persons described in i. above, the determination of statutory blindness is responsibility of the Division of Public Welfare, Bureau of Medical Affairs, Medical Review Team.

3. Disabled: Needy persons who are disabled. Disability is the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. The severity of impairment must be such that the individual is unable to do his or her previous work or any other substantial gainful activity which exists in the national economy. In the determination of a person's ability to do any other work, residual functional capacity, age, education, and work experience are considered.

i. Disability for children under the age of 18 is any medically determinable physical or mental impairment which compares in severity to an impairment that would make an adult disabled.

ii. Persons who are receiving Social Security disability benefits are presumed to be disabled for purposes of this program.

iii. Except for persons described in ii. above, the determination of disability is the responsibility of the Division of Public Welfare, Bureau of Medical Affairs, Medical Review Team.

(d) Under certain circumstances, an individual may be considered for eligibility under both the SSI-related and AFDC-related categories (for

example, a blind child under the age of 21). Such an individual may select the category under which he or she wishes to be considered for program eligibility upon being advised by the county welfare agency of the option and the consequences thereof.

10:70-3.5 Budget unit

(a) The term "budget unit" means those persons whose income and resources are counted in the determination of eligibility for persons applying for or eligible for the Medically Needy Program. Incurred medical expenses of all members of the budget unit are applied in meeting spend-down liability when applicable (see N.J.A.C. 10:70-6). Only those members of the budget unit who are either SSI-related or AFDC-related (see N.J.A.C. 10:70-3.4) may qualify for coverage under the Medically Needy Program.

(b) For AFDC-related persons (pregnant women and children under the age of 21), the budget unit shall be constituted as follows:

1. A pregnant woman shall comprise a budget unit of two. If the pregnant woman is married and living with her husband, the budget unit shall consist of three persons. The woman's natural or adoptive children under the age of 21, living in the same household, shall be included in the budget unit. If the pregnant woman is under the age of 21 and resides in the same household as her natural or adoptive parents, the parents shall be included in the budget unit.

2. For children under the age of 21, the budget unit shall be composed of all blood-related or adoptive brothers and sisters under the age of 21 living in the same household, as well as the natural or adoptive parent(s) of the children when living in the same household.

i. In the event the children under the age of 21 reside with a stepparent, the stepparent may be included in the budget unit. If the stepparent is included in the budget unit, his or her income and resources will be included in the determination of Medically Needy eligibility and his or her medical expenses will apply in the determination of spend-down liability, if applicable. If the stepparent is not to be included in the budget unit, his or her income, resources, and medical expenses will not be included in the determination of Medically Needy eligibility.

ii. The option of including or not including the stepparent in the budget unit, and the consequences thereof, shall be fully explained to program applicants so that an informed decision may be made.

3. Any person who is in receipt of AFDC or SSI or who has applied for and been found eligible for regular Medicaid benefits related to those programs shall not be included in the budget unit of an AFDC-related case. Any person whose income and resources have been deemed to an eligible SSI recipient shall likewise not be included in the budget unit.

(c) For SSI-related persons (aged, blind, and disabled individuals), the budget unit shall be constituted as follows:

1. An aged, blind, or disabled adult not living with his or her spouse is a budget unit of one regardless of the number of other persons (related or unrelated) living in the same household.

2. An aged, blind, or disabled adult living with his or her spouse (whether or not the spouse is program eligible) is a budget unit of 2 regardless of other persons (related or unrelated) living in the same household (see N.J.A.C. 10:70-4.6(d)1 for an exception to this rule in circumstances involving an SSI-related child).

3. For a blind or disabled child (under the age of 21), the budget unit shall ***[include]* *consist of* the child*.* *[and his or her natural or adoptive parent(s) with whom the child is living.]* *Parental income is deemed to any such child under the age of 18 in accordance with provisions at N.J.A.C. 10:70-4.6(d).***

4. For circumstances in which more than one sibling residing in the same household with their parent(s) apply as SSI-related, ***[the budget unit size will depend on the process of deeming of income. Budget unit composition must be developed in conjunction with rules at N.J.A.C. 10:70-4.6.]* *each such child will be a budget unit of one person and parental income deemed in accordance with provisions at N.J.A.C. 10:70-4.6(d).***

5. Any person who is in receipt of AFDC or SSI or who has applied for and been found eligible for regular Medicaid benefits related to those programs shall not be included in the budget unit of an SSI-related case.

6. When one or more siblings of a Medically Needy SSI-related child apply for and are found eligible for the Medically Needy Program as AFDC-related, the SSI-related child will be considered in a budget unit of one. (Parental income and resources will be considered toward the AFDC-related children only.)

(d) In family groups living in the same household, some of the members may qualify as SSI-related and others as AFDC-related. The family's choice of persons for whom Medically Needy benefits are sought will vary the composition of the budget unit and affect eligibility for the program.

Available options shall be fully explained to the family by the county welfare agency so that the family may make an informed decision regarding application options.

10:70-3.6 Third party liability

Program applicants and recipients are required to identify to the county welfare agency any third party (individual, entity, or program) that is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or recipient.

10:70-3.7 Eligibility under other Medicaid categories

Eligibility for the Medically Needy Program will not be established for any individual who is eligible for Medicaid Only, Medicaid Special, Medicaid for the Unborn, or extended Medicaid benefits resulting from the previous receipt of AFDC. Such individuals are eligible for payment of covered medical services under the categorically needy Medicaid program.

10:70-3.8 Persons sanctioned under AFDC rules

(a) Persons who are ineligible for AFDC due to the imposition of a sanction of ineligibility in that program may be eligible for the Medically Needy Program (with the exception below) without regard to the sanction.

1. Any person ineligible for AFDC solely as a result of being on strike is likewise ineligible for the Medically Needy Program. Because caretaker relatives are not eligible for the Medically Needy Program, participation in a strike by the caretaker relative will not affect the eligibility of children applying for the Medically Needy Program.

2. See N.J.A.C. 10:70-4.5(c) for persons ineligible for AFDC due to a period of ineligibility imposed as a result of the receipt of lump sum income.

10:70-3.9 Application for other benefits

(a) As a condition of eligibility for the Medically Needy Program, applicants and recipients are required to take all necessary steps to obtain any annuities, pensions, retirement and disability benefits to which they are entitled, unless they can show good cause for not doing so. Applicants and recipients must avail themselves of any health insurance available to the budget unit at no cost, such as coverage provided at no cost by an employer.

1. Annuities, pensions, retirement and disability benefits include, but are not limited to, veterans' compensation and pensions, Social Security benefits, unemployment compensation.

10:70-3.10 Inmates of public institutions

(a) Any person who is an inmate of a public institution is ineligible for the Medically Needy Program.

(b) Any person who is incarcerated in a Federal, State, or local correctional facility (prison, jail, detention center, reformatory, etc.) is not eligible for Medically Needy Program benefits.

SUBCHAPTER 4. INCOME ELIGIBILITY

10:70-4.1 Medically Needy Income Levels

(a) Income eligibility for the Medically Needy Program may be established by two methods. If the countable income of the budget unit (as determined in this subchapter) is equal to or less than the Medically Needy Income Level (MNIL) appropriate for the budget unit size, income eligibility is established and the eligible persons are entitled to Medically Needy program payment for covered services. For cases in which the countable income of the budget unit exceeds the appropriate MNIL, income eligibility may only be established through medical spend-down (see N.J.A.C. 10:70-6).

1. The monthly MNIL for budget units consisting of two to ten persons shall be based on the AFDC-C and -F allowance standards (as set forth at N.J.A.C. 10:82-1.2(c)). The allowance standard for the eligible unit size corresponding to the budget unit size will be multiplied by 1.333. The result of this computation shall be multiplied by 12 and the result rounded up to the next nearest \$100.00. After rounding, the amount shall be divided by 12. Any cents resulting from this calculation are dropped and the remainder is the monthly MNIL.

2. To establish the monthly MNIL for budget units of more than 12 persons, the calculation in 1. above shall be applied to the AFDC-C and -F increment applicable for each additional person in eligible units of more than ten persons (see N.J.A.C. 10:82-1.2(c)). The resulting amount for each additional budget unit member shall be added to the monthly MNIL for ten persons.

3. For budget units of one person, the AFDC-C and -F allowance standard for two persons shall be reduced by the increment for each additional person applicable to eligible units of more than ten persons

(see N.J.A.C. 10:82-1.2(c)). The result of this computation shall be calculated as in 1. above. The resulting amount is the monthly MNIL for one person.

10:70-4.2 Eligibility periods

(a) The retroactive eligibility period is the three calendar months immediately preceding the month in which application for benefits is made.

(b) The prospective eligibility period is the six calendar months beginning with the month of application. Once established, the prospective eligibility period will not be changed unless the case becomes ineligible for the Medically Needy Program during the eligibility period. Upon reapplication for the program, a new prospective eligibility period will be established.

1. Eligibility for the program does not extend beyond the end of the eligibility period. Continuation of program benefits is contingent upon a redetermination of all factors of eligibility (see N.J.A.C. 10:70-2.5).

10:70-4.3 Computing income for six-month prospective period

(a) The county welfare agency shall establish the best estimate of income that will be available in the six-month prospective eligibility period.

1. The best estimate of income shall be based on an average of the budget unit's income for the full two-month period prior to the date of application. Adjustments shall be made in the estimated income to reflect changes in income that either have occurred or are reasonably anticipated to occur which would affect countable income for the prospective budget period. Once established, the best estimate of monthly income shall be applied to each of the six months of the budget period. If the income for the full six-month period is less than or equal to the MNIL for the six-month period, eligibility for program benefits has been established. If the income for the period exceeds the six-month MNIL, eligibility for program benefits may be established through the medical spend-down process.

2. Income changes during the six-month eligibility period require an adjustment to the countable income for the month of the income change and a new best estimate of income must be established for the remaining months of the eligibility period must be established if the change in income will continue.

i. For a case not subject to medical spend-down, an increase in countable income for the remaining months of the eligibility period, will result in the establishment of a spend-down liability if the income for those months exceeds the MNIL for the remaining months.

ii. For a case which has been determined eligible pending spend-down, changes in income during the eligibility period require a recomputation of spend-down liability for the eligibility period which may increase or decrease the liability of the budget unit. If a decrease in income is sufficient to reduce the budget unit's income below the six-month MNIL, eligibility is established without a spend-down liability for the remaining months of the eligibility period.

iii. For a case which has met the spend-down liability during the eligibility period, the recomputation of income for the remaining months of the eligibility period will result in the establishment of an additional spend-down liability if the countable income for the remaining months exceeds the MNIL for those months. Eligibility for the months in which the previously computed liability was met will not be retroactively affected by the new liability established for the remaining months of the eligibility period.

10:70-4.4 Computing income for retroactive period

(a) In determining income eligibility for the retroactive eligibility period, countable income actually received in each month of the three-month period shall be compared to the budget unit's monthly MNIL for the same month. If the countable income for a month is less than or equal to the MNIL, eligibility for program benefits for that month has been established. If the income for a month exceeds the MNIL for that month, eligibility for program benefits may be established through the spend-down process (see N.J.A.C. 10:70-6).

10:70-4.5 Countable income: AFDC-related cases

(a) Except as specified below, countable income for AFDC-related cases shall be determined in accordance with regulations applicable to income in the AFDC-C program (see N.J.A.C. 10:82).

1. The maximum income limits as provided for at N.J.A.C. 10:82-1.2(d) do not apply.

2. The \$30.00 and the one-third disregard of earned income at N.J.A.C. 10:82-2.8(a)3 and 10:82-4.4(c) do not apply.

3. The deeming of stepparent income at N.J.A.C. 10:82-2.9(d) does not apply. See N.J.A.C. 10:70-3.5(b)2 regarding inclusion or exclusion of the stepparent from the budget unit.

4. The deeming of income of an alien's sponsor at N.J.A.C. 10:82-3.13 does not apply.

(b) Nonrecurring lump sum income received by an AFDC-related budget unit shall be counted as income in the month received and any portion retained shall be counted as a resource in subsequent months. The receipt of such income will require a recomputation of income eligibility for the remaining months of the eligibility period.

(c) Any person who received AFDC or Medicaid based on AFDC rules and became ineligible for such assistance because of a period of ineligibility imposed as a result of the provisions of N.J.A.C. 10:82-4.15 shall likewise be ineligible for the Medically Needy Program for the same period as determined in AFDC. Once imposed, the period of ineligibility may only be reduced in accordance with the provisions of N.J.A.C. 10:82-4.15(a)5.

(d) For AFDC-related cases the following persons are legally responsible relatives to members of the AFDC-related eligibility group: parents of a child under the age of 18; parents of a child aged 18 to 21 unless the child is him or herself a parent; and the spouse of any member of the eligibility group. When a legally responsible relative resides in the same household as the member of the eligibility group, income of the legally responsible relative is counted in accordance with the structure of the budget unit and no additional evaluation of the relative is required. When the eligible group member does not reside in the same household as the legally responsible relative, the county welfare agency shall pursue support from such relative in accordance with the provisions of N.J.A.C. 10:82-3.8 et seq.

1. Except when the legally responsible relative resides in the same household as the member of the eligibility group, income of the relative shall be counted only to the extent that the income is actually available.

10:70-4.6 Countable income: SSI-related cases

(a) Except as specified below, countable income for SSI-related cases shall be determined in accordance with regulations applicable to income in Medicaid Only—Aged, Blind, and Disabled (see N.J.A.C. 10:94-5).

1. The disregard of cost-of-living increases in Social Security benefits provided for in N.J.A.C. 10:94-5.3(a)7x. and xi. do not apply in the Medically Needy Program.

2. The deeming of the income of an alien's sponsor as provided for at N.J.A.C. 10:94-5.7 does not apply.

(b) Nonrecurring lump sum income received by an SSI-related budget unit shall be counted as income in the month received and any portion retained shall be counted as a resource in subsequent months. The receipt of such income will require a recomputation of eligibility for the remaining months of the eligibility period.

(c) In the following circumstances, an SSI-related case will have the value of in-kind support and maintenance counted as unearned income.

1. Any SSI-related adult, who would in accordance with rules at N.J.A.C. 10:94-5.6(c) be determined to be "living in the household of another", shall be considered to have unearned income in the amount specified at N.J.A.C. 10:94-5.4(a)12 less \$20.00. The amount of income so assigned is not rebuttable.

2. Any SSI-related person other than those addressed in 1. above, to whom food, clothing, or shelter is given or paid for by someone other than by a spouse, a parent, or a minor child residing in the same household, shall be presumed to receive in-kind support and maintenance. The presumed value of the support and maintenance will be the values specified at N.J.A.C. 10:94-5.4(a)12. The presumed value so assigned may be rebutted in accordance with provisions of that subsection.

(d) In accordance with the rules at N.J.A.C. 10:94-5.5, the income of an ineligible spouse shall be deemed to the eligible spouse when they are residing in the same household. Income of *[an SSI-related child's]* ***the* parent(s) *of an SSI-related child under the age of 18*** residing in the same household shall be deemed available to the child in the determination of eligibility for Medically Needy benefits. Income shall not be deemed from any person whose income is counted in determining income eligibility for an AFDC-related case which is eligible for the Medically Needy Program.

1. When an ineligible spouse's income must be deemed to both an SSI-related spouse and an SSI-related child, the income of the ineligible spouse is deemed to the SSI-related spouse to the extent that the total income of the SSI-related spouse equals the MNIL for two persons. The excess income of the ineligible spouse is deemed to the SSI-related child. The eligibility of the SSI-related child is based on a budget unit of ***[two]* *one* person*[s]** * [consisting consisting of the SSI-related child and the ineligible spouse.]* ***Allowable incurred medical expenses of the ineligible spouse shall be applied to the spend-down liability, if any, of the SSI-related child.*****

2. When parental income must be deemed to more than one SSI-related child, income shall be deemed in accordance with the following model based on two SSI-related children. *[Income shall be deemed as follows:]** Income to child A is deemed to the extent that the child's total income equals the MNIL for a budget unit of one person. The remaining deemed income shall be deemed to child B. Child A's eligibility will be based on a budget unit of one person **(with no spend-down liability)** and child B's eligibility will be based on a budget unit of **[two or three (depending on whether the income of one or two parents is deemed)]** **one and the allowable incurred medical expenses of the parents applied to child B's spend-down liability if any**. For additional SSI-related children, deeming of income would be to the MNIL for one person **for** each additional child *[and only one of the SSI-related children will be considered in a budget unit of more than one]**.

SUBCHAPTER 5. RESOURCE ELIGIBILITY

10:70-5.1 Resource eligibility limits

(a) Eligibility for the Medically Needy Program does not exist for any month in which the total value of a budget unit's countable resources exceeds the limits below:

Budget Unit Size	1	2	3	4	5	Each Additional
Before 1/1/87	\$3,400	\$5,100	\$5,200	\$5,300	\$5,400	\$100
1/1/87-12/31/87	3,600	5,400	5,500	5,600	5,700	100
1/1/88-12/31/88	3,800	5,700	5,800	5,900	6,000	100
1/1/89 and after	4,000	6,000	6,100	6,200	6,300	100

10:70-5.2 AFDC-related cases

For AFDC-related cases, the resource provisions of AFDC (see N.J.A.C. 10:82) apply in determining countable resources.

1. AFDC provisions requiring the deeming of the resources of an alien's sponsor do not apply in the determination of resource eligibility for the Medically Needy Program.

2. AFDC provisions allowing the establishment of eligibility pending the liquidation of nonexempt resources (N.J.A.C. 10:82-3.6) do not apply in the determination of resource eligibility for the Medically Needy Program. All nonexempt property shall be counted in the determination of resource eligibility.

10:70-5.3 SSI-related cases

(a) For SSI-related cases, the resource provisions of the Medicaid Only (Aged, Blind, and Disabled) program shall apply in the determining of countable resources for the Medically Needy Program.

1. Medicaid Only provisions requiring the deeming of the resources of an alien's sponsor (N.J.A.C. 10:94-4.6(f)) do not apply in the Medically Needy Program.

(b) The provisions relating to deeming of resources found at N.J.A.C. 10:94-4.6 apply in SSI-related cases. In the deeming of resources from one parent to a child, the countable parental resource in excess of the **[medically needy]* *Medicaid Only* resource limit for **[a budget unit of one person]* *an individual** shall be deemed to the child. When the resources of two parents must be deemed to the child, countable parental resources in excess of the **[medically needy]* *Medicaid Only* resource limit for a **[budget unit of two persons]* *couple** shall be deemed to the child.**

10:70-5.4 Transfer of resources

(a) For AFDC-related cases, the AFDC policy regarding the transfer of resources to qualify for benefits (N.J.A.C. 10:81-3.38(c)) shall apply to all members of the budget unit.

(b) For SSI-related cases, the Medicaid Only Program policy regarding the transfer of resources (N.J.A.C. 10:94-4.7) shall apply to all members of the budget unit.

SUBCHAPTER 6. MEDICAL SPEND-DOWN

10:70-6.1 Eligibility under medical spend-down

(a) Persons who are eligible in all respects for the Medically Needy Program, except that the countable income of the budget unit as determined in subchapter 4 exceeds the medically needy income level, may establish eligibility for payment of covered services benefits through medical spend-down.

1. Medical spend-down is a process whereby the excess countable income of a budget unit is offset by the allowable incurred medical expenses of the budget unit.

2. Spend-down liability is the amount by which the countable income of the budget unit exceeds the medically needy income level as determined under the provisions of this subchapter.

(b) The retroactive eligibility period is the three calendar months immediately preceding the month in which application for benefits is made. For each of the three months, a monthly spend-down liability is established. The monthly spend-down liability shall be the amount by which actual countable income of the budget unit for that month exceeds the medically needy income level for that month.

1. Within the retroactive eligibility period, income eligibility is established for any month in which the allowable incurred medical expenses of the budget unit exceed the spend-down liability established for that month.

2. Eligibility for payment of covered services is established effective with the first day of each or any month in which the allowable incurred medical expenses of the budget unit exceed the spend-down liability only for those claims for services that are not covered under the Medically Needy Program and were not used to meet spend-down liability. (Note: the effective date to be entered in the Medicaid Status File is the day after the day that spend-down liability is met.)

(c) Except for retroactive eligibility, income eligibility for the Medically Needy Program is determined using a six-month prospective eligibility period. The six-month period begins with the month in which application for benefits is made. For the full six-month period, a six-month spend-down liability is established. The six-month spend-down liability shall be the amount by which the countable income of the budget unit, as determined at N.J.A.C. 10:70-4.2, exceeds the budget unit's medically needy income level for the full six-month period.

1. Eligibility for medically needy benefits is established effective with the first day of the month in which the allowable incurred medical expenses of the budget unit exceed the six-month spend-down liability only for those claims for services that are covered under the Medically Needy Program and were not used to meet spend-down liability. (Note: the effective date to be entered on the Medicaid Status File is the day after the day spend-down liability is met.)

2. Changes in the budget unit and/or the size of the budget unit during the six-month prospective period require a recalculation of the six-month spend-down liability.

3. In order to receive program benefits, upon meeting the spend-down liability, all other factors of program eligibility must also be met.

10:70-6.2 Allowable incurred medical expenses

(a) Allowable incurred medical expenses which may be applied against spend-down liability are those which are:

1. Incurred by a member of the budget unit and for which a member of the budget unit has an express obligation for payment;

2. For necessary medical or remedial services recognized under state law, provided, prescribed, or recommended by a qualified and appropriately licensed medical practitioner; and

3. Submitted with sufficiently detailed information and documentation to determine the allowableness of the expense. Minimum necessary information includes: the date of the service, name of the provider, the nature of the service, the name of the individual to whom the service was provided, and the total amount of the bill, as well as the remaining balance outstanding.

(b) Medical expenses which have been paid in full prior to the retroactive budget period, shall not be applied against spend-down liability. However, medical expenses paid by a member of the budget unit during an eligibility period may be used in meeting spend-down liability so long as the expense met the criteria specified in (a) above.

(c) The county welfare agency shall refer the submission of expenses for questionable medical services to designated staff of the Division of Medical Assistance and Health Services for a determination of allowableness.

(d) To the extent that payment of any bill for medical services is the responsibility of a third party (for example, a health insurer), the expense shall not be applied against spend-down liability.

(e) Any bill for medical services rendered more than six months prior to the bill's submission to the county welfare agency for application against spend-down liability must be accompanied by a statement from the provider that the expense remains an express obligation of a member of the budget unit and has not been forgiven by the provider or otherwise determined uncollectible.

10:70-6.3 Application of medical expenses toward spend-down

(a) In determining eligibility under medical spend-down, expenses are applied in the following order against the spend-down liability:

1. Medicare and other health insurance premiums, deductibles, or coinsurance charges incurred by a member of the budget unit;

2. Expenses incurred by the members of the budget unit for allowable medical expenses for services not covered under the Medically Needy

Program (including covered services provided to members of the budget unit who are not members of a medically needy eligibility category);

3. Expenses incurred by budget unit members, who are also members of a medically needy eligibility category, for services covered by the Medically Needy Program.

(b) Health insurance premiums billed less often than monthly, shall be averaged over the period of coverage that the premium is intended to purchase and applied incrementally against spend-down liability. The client is required to report to the county welfare agency the cancellation of any such insurance.

(c) If a member of a budget unit has arranged to make monthly payments toward a previously incurred medical expense thereby modifying the terms of the liability for the expense, the amount of the monthly obligation rather than the outstanding balance shall be applied against spend-down liability.

(d) Any medical expenses may be applied against spend-down liability only once. However, incurred medical expenses in excess of those required to meet the spend-down liability for a budget period (which have not been applied against spend-down liability), may be applied against spend-down liability in future budget period so long as a member of the budget unit continues to have an express obligation for payment of the expense.

1. If, in any eligibility period, the budget unit does not meet its spend-down liability, the incurred medical expenses that were compared to that spend-down liability are not considered to have been used in meeting spend-down liability. Any such expenses may be applied to subsequent eligibility periods so long as the expenses remain allowable in accordance with N.J.A.C. 10:70-6.2.

(e) In certain circumstances, it may be beneficial to program applicants or recipients to delay the application of incurred medical expenses against spend-down liability. For example: An individual has sufficient incurred medical expenses to establish eligibility under medical spend-down in each of the three months of the retroactive eligibility period. However, during that period, he has no or few incurred expenses for services covered under the Medically Needy Program. The individual may elect to forego eligibility for the months of retroactive coverage and apply the incurred medical expenses against spend-down liability for the prospective eligibility period. In any such circumstances, the county welfare agency shall fully explain the options available and the ramifications thereto.

SUBCHAPTER 7. OTHER ADMINISTRATIVE REQUIREMENTS

10:70-7.1 Notice of county welfare agency decision

(a) The county welfare agency shall promptly notify any applicant for, or recipient of, the Medically Needy Program in writing of any agency decision affecting the applicant or recipient. When a decision relates to any adverse action which may entitle a recipient to a fair hearing, the action may not be implemented until at least ten days after the mailing of the notice (see (f) of this section for exceptions to the ten-day notice).

1. For notices of action adverse to a recipient, the date of mailing of the notice must appear on the notice.

2. Notices of any county welfare agency action must contain the name, address, and telephone number of the legal services agency serving that county.

3. In the case of an applicant or recipient who cannot be located, the notice shall be mailed to his or her last known address.

(b) All notices of agency decision shall state in clear and simple language, the nature of the agency decision and an accurate factual and legal basis for the decision.

1. All notices of agency decision shall include an explanation of the right to a fair hearing.

2. Notices of agency decisions adverse to the applicant or recipient shall include the citation and title of the regulations upon which the agency decision is based.

(c) For cases which are determined eligible pending spend-down, the notice shall include a statement of the amount of spend-down liability and shall advise the applicant to notify the county welfare agency when that liability is met. The notice shall also advise that the established spend-down liability is subject to a change based on changes in countable income or budget unit size or composition. Further, the notice must specify that eligibility under medical spend-down is contingent on all other factors of eligibility being met at the time that the spend-down liability is met.

(d) All notices of denial or termination shall include an explicit statement of the reason for program ineligibility and (except in the case of the death of an applicant or recipient) advise of the right to reapply whenever the applicant or recipient believes that circumstances have changed such that the reason for program ineligibility no longer exists.

(e) When the processing of an application will be delayed beyond the standards for disposition of an application as set forth in N.J.A.C. 10:70-2.1(d), notice shall be mailed prior to the expiration of the disposition period notifying the applicant of the delay and the reasons for it.

(f) The ten-day notice requirement for actions adverse to a program recipient need not be adhered to when:

1. The county welfare agency has factual information confirming the death of a recipient;

2. The county welfare agency receives a clear written statement, signed by a recipient, that he or she no longer wishes to receive program benefits, or which gives information indicating a change in circumstances which requires a termination or reduction in benefits, and the recipient has indicated in writing, that he or she understands that this must be the consequence of supplying such information;

3. The recipient's whereabouts are unknown and agency mail directed to him or her has been returned by the post office indicating no forwarding address;

4. The recipient has been accepted for public or medical assistance in another state and that fact has been established by the county welfare agency; or

5. A recipient child has been removed from the home as a result of a judicial determination, or voluntarily placed in foster care by his or her legal guardian.

10:70-7.2 Fair hearings

(a) It is the right of every applicant for or recipient of the Medically Needy Program to be afforded the opportunity for a fair hearing in the manner set forth in N.J.A.C. 10:49-5, including when applicable, continuation of program benefits pending the results of the fair hearing.

(b) Any request for a fair hearing shall be forwarded to the Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625.

10:70-7.3 Case records

(a) The purpose of the case record is to provide a complete documentary record of county welfare agency decisions and actions and the reasons therefor.

(b) The case record shall include:

1. A record of all county welfare agency actions and decisions relating to the case, as well as, documentary evidence relating to such actions and decisions, including application forms;

2. All medical reports and a record of action of the Medical Review Team as appropriate;

3. All forms relating to financial eligibility including, when appropriate, spend-down liability; and

4. All case-related correspondence, memorandum, and documents except those required by law or regulation to be maintained elsewhere.

(c) No case record, or part thereof, shall be removed from its file location without a record identifying the person who has custody of it.

(d) No case record, or part thereof, shall be removed from the county welfare agency offices except upon the specific authorization of the agency director, deputy director, or other person specifically designated by the agency director to authorize such removal.

(e) All case records shall be filed in a secure and fire-resistant location.

INSURANCE

(a)

DIVISION OF ACTUARIAL SERVICES

Alcoholism Benefits

Adopted New Rule: N.J.A.C. 11:4-15

Proposed: April 7, 1986 at 18 N.J.R. 607(a).

Adopted: May 23, 1986 by Kenneth D. Merin, Commissioner,
Department of Insurance.

Filed: May 23, 1986 as R.1986 d.228, **without change.**

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17B:27-46.1 and
17B:26-2.1.

Effective Date: June 16, 1986.

Expiration Date: December 2, 1990.

Summary of Public Comments and Agency Responses:

The Department received one comment on the proposed rule N.J.A.C. 11:4-15 concerning alcoholism benefits from the Health Insurance Association of America.

COMMENT: The writer complained that the rule mandates provision of alcoholism benefits upon renewal of the policy and this requirement extends to policies which are issued on a guaranteed renewable basis. The commenter questioned the fairness of imposing such a requirement on policies issued prior to the promulgation of the rule because the insurer has no choice but to renew the policy at the option of the insured.

RESPONSE: In promulgating this regulation, the Department is simply responding to a requirement of N.J.S.A. 17B:26-2.1 and 17B:27-46.1 specifying that hospital and medical expense benefit policies renewed after the effective date of the laws (June 2, 1977) must provide benefits for the treatment of alcoholism. Further, it should be noted that this adopted rule contains the standards which have been used by the Department since the promulgation of the original rule in 1978.

Finally, as a result of internal review of the proposal, a typographical error in one of the citations in the authority section of the rule was discovered. The adoption reflects the correct citation.

Full text of the adoption follows.

SUBCHAPTER 15. ALCOHOLISM BENEFITS

11:4-15.1 Scope

This subchapter applies to all individual and group health insurance policies providing hospital-medical expense benefits issued or renewed in this State. "Renewed" is defined as any date the insurer has the option to change the level of premium rates. This subchapter does not apply to policies which provide only limited hospital or medical expense coverage, such as: Medicare complement policies, hospital income policies, student accident, trip or accident only policies, PIP coverage, cancer or dread disease policies, or surgical expense policies, or to policies issued prior to June 2, 1977, where the premium is guaranteed at issue and the insurer cannot increase the premium.

11:4-15.2 Benefits

(a) The following benefits shall be included in each contract:

1. Where benefits are defined in terms of inpatient days, treatment of alcoholism by means of inpatient confinement in a detoxification facility or a residential treatment facility, and outpatient treatments shall be considered equivalent to inpatient hospital days and afforded the same kind of coverage under the policy as an alternative to inpatient hospital days.

2. For policies that provide blanket reimbursement for medical expenses, with or without deductibles, coinsurance, and inside limits, alcoholism shall be covered as any other sickness, subject to the same deductibles and coinsurance, but with the inside limits on inpatient hospital days applying equally to detoxification facilities, residential treatment facilities, and outpatient treatments.

3. Outpatient treatment is defined as treatment on an outpatient basis at a hospital or residential treatment facility or as aftercare at a detoxification facility as provided by certified alcoholism counselors and other professionals employed by these health care facilities under a program approved by the Division on Alcoholism.

11:4-15.3 Exclusions

(a) An insurer may avail itself of any appropriate legal methods to avoid duplication of coverage, such as coordination of benefits provisions or statutory provisions concerning other insurance.

(b) Alcoholism benefits must be included for all certificate holders under all group policies issued or renewed in New Jersey. New Jersey residents insured under group policies issued in other states are not covered by this rule.

(c) Policy exclusions relating to workers' compensation, employers' liability laws, veterans' hospitals, military services, etc. may apply also to benefits for alcoholism treatment.

(d) Benefits need not be payable if no charge is normally made for the service.

(e) Benefits may be limited to the reasonable and customary charges for care and treatment.

(f) Benefits may be limited to expenses for treatment provided at the appropriate level of care.

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Carnival-Amusement Rides Public Safety Standards

Adopted Amendments: N.J.A.C. 12:195-1.7, 1.9, 1.12, 1.13, 1.14, 2.1, 3.1, 3.3, 3.9, 3.10, 4.2, 4.6 and 5.11

Adopted New Rules: N.J.A.C. 12:195-1.3, 1.4, 3.14, and 6

Adopted Repeal: N.J.A.C. 12:195-1.3

Proposed: April 7, 1986 at 18 N.J.R. 609(a).

Adopted: May 22, 1986 by George M. Krause, Acting Commissioner, Department of Labor.

Filed: May 23, 1986 as R.1986 d.222, **with substantive changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:3-31 et seq., specifically N.J.S.A. 5:3-36.

Effective Date: June 16, 1986.

Expiration Date: September 6, 1988.

Summary of Public Comments and Agency Responses:

The Department of Labor held open a comment period until May 7, 1986. The Department of Labor also solicited comments from a List of Interested Parties. These interested parties are listed below:

American Society of Safety Engineers; c/o New Jersey State Safety Council; Cranford, N.J.

Amusements of America; Englishtown, N.J.

Clementon Lake Amusement Park; Clementon, N.J.

New Jersey Amusement Association; Toms River, N.J.

New Jersey Association of Counties, Trenton, N.J.

New Jersey Manufacturers Insurance Co.; West Trenton, N.J.

New Jersey State Chamber of Commerce; Trenton, N.J.

New Jersey State Safety Council; Cranford, N.J.

New Jersey State League of Municipalities; Trenton, N.J.

No comments were received. The Department of Labor, however, wishes to adopt one change from the amendments as proposed.

N.J.A.C. 12:195-1.14(c) is not in accordance with the terms of the statutory provision of N.J.S.A. 5:3-50(c). The rule has been amended upon adoption to conform to the requirements of the statute.

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

12:195-1.3 Scope

(a) This chapter shall apply to:

1. An amusement ride subject to the Carnival-Amusement Rides Act, N.J.S.A. 5:3-31 et seq.;

2. An amusement ride as defined in N.J.A.C. 12:195-2.1;

3. Any mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course for the purpose of giving its passengers amusement, pleasure, thrills or excitement and including, among others:

i. A water slide exceeding 15 feet in height; and

ii. A water amusement ride as defined N.J.A.C. 12:195-2.1; and

4. Any passenger or gravity propelled ride when located in an amusement area or park in which there are other rides covered by the Act.

(b) This chapter shall not apply to:

1. A locomotive weighing more than seven tons, operating on a track the length of which is one-half mile or greater, the gauge of which is three feet or greater, and the weight of which is at least 60 pounds per yard;

2. Any single-passenger manually, mechanically or electrically operated, coin-operated ride, which is customarily placed, singly or in groups, in a public location and which does not normally require the supervision or services of an operator; or

3. A passenger or gravity propelled ride that is not a mechanical device and is not located in an amusement area or park.

(c) The height of a water slide as described in (a)3.i above shall be the difference in elevation between the point of entry (top) and the point of discharge (bottom) of the slide.

(d) A locomotive falling within the scope of (b)1 above shall be under the jurisdiction of the New Jersey Department of Transportation for the purpose of safety inspection.

12:195-1.4 Documents referred to by reference

(a) The availability of standards and publications referred to in this chapter is explained in N.J.A.C. 12:195-6.

(b) The standards listed below have been utilized in the development of this rule, when appropriate:

1. ASTM F 698—1983, Physical Information to be provided for Amusement Rides and Devices;
2. ASTM F 747—1982, Definitions of Terms Relating to Amusement Rides and Devices;
3. ASTM F 770—1983, Operation Procedures for Amusement Rides and Devices;
4. ASTM F 846—1983, Testing Performance of Amusement Rides and Devices;
5. ASTM F 853—1983, Maintenance Procedures for Amusement Rides and Devices; and
6. ASTM F 893—1984, Inspection of Amusement Rides and Devices.

12:195-1.7 Existing equipment

Maintenance of existing equipment shall be in accordance with this chapter. Any replacements of existing equipment shall also be in conformity with this chapter.

12:195-1.9 Inspection fee and permit

(a) Before commencing operations and in each year thereafter, an owner shall apply for a permit with an application form furnished by the Division and containing such information as the Division may require. The application shall be accompanied by a certificate of insurance, bond, or other security indicating that the owner has complied with N.J.A.C. 12:195-1.14.

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

(h) The Division shall order in writing a temporary cessation of operation of an amusement ride if it has been determined after inspection to be hazardous or unsafe. Operation of the ride shall not be resumed until the ride has been reinspected by a designee of the Division and it is determined by the designee to be safe for operation.

(i) (No change.)

12:195-1.12 Reporting

(a) (No change.)

(b) Any major breakdown or malfunction of a ride shall be reported immediately by the owner to the Division by telephone or other means.

(c) (No change.)

12:195-1.13 Serious injury or death to a member of the public

(a) When any accident occurs at an amusement ride which results directly or indirectly in a serious injury or death to a member of the public, the amusement ride shall be:

1.-2. (No change.)

3. Secured to prevent operation until the Division has conducted a full investigation and permits operation with passengers.

12:195-1.14 Insurance, bond or other security

(a) (No change.)

(b) The policy shall be procured from one or more insurers acceptable to the Commissioner of Insurance, and either:

1. (No change.)

2. Approved as surplus line insurers pursuant to N.J.S.A. 17:22-6.45.

(c) The bond *[cash or other security]* as required by (a)2 *[or (a)3]* above shall provide at least \$100,000 for each ride.

(d) The bond of (a)2 above shall be in such form and content as to be acceptable to the Department of Insurance.

(e) The cash or other security shall be assigned to meet carnival-amusement ride liability judgments only.

12:195-2.1 Definitions

“Amusement ride” means any mechanical device or devices, including water slides exceeding 15 feet in height, which carry or convey passengers along, around, or over a fixed or restricted route or course for the purpose of giving its passengers amusement, pleasure, thrills or excitement, and any passenger or gravity propelled ride when located in an amusement area or park in which there are other rides covered by the Act; provided, however that this shall not include locomotives weighing more than seven tons, operating on track the length of which is one-half mile or greater, the gauge of which is three feet or greater, and the weight of which is at least 60 pounds per yard. (See “Water amusement ride.”)

“Commissioner” means the Commissioner of Labor of the State of New Jersey or his authorized designee.

“Division” means the Division of Workplace Standards, New Jersey Department of Labor, CN 054, Trenton, New Jersey 08625-0054.

“Office of Safety Compliance” means the Office of Safety Compliance in the Division of Workplace Standards, New Jersey Department of Labor, CN 386, Trenton, New Jersey 08625-0386.

12:195-3.1 Design

(a) (No change.)

(b) All amusement rides shall be designed and constructed in accordance with accepted engineering practice, and all reasonably foreseeable hazards which could arise from use or probable misuse of the ride shall be guarded against in the design insofar as it is feasible to do so. “Accepted engineering practice” means that which conforms to accepted principles, tests or standards of accredited authorized agencies, and to standards or generic principles and practices of safety engineering.

(c)-(f) (No change.)

(g) All structures used in connection with amusement rides shall be so designed and constructed as to carry safely all loads to which such structures may be subjected.

12:195-3.3 Means of access and egress

(a)-(h) (No change.)

(i) The vertical clearance in passageways shall not be less than seven feet.

(j)-(s) (No change.)

12:195-3.9 Passenger tramways

(a) Aerial Passenger Tramways, ANSI B77.1-1982 is hereby adopted and incorporated by reference as a rule with modifications as indicated in (b) below.

(b) The following are modifications to the rule as referenced in (a) above:

1. Sections 1.1 through 1.3, and Section 8 are deleted.

2. (No change.)

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

12:195-3.10 Electrical equipment

(a) The National Electrical Code, NFPA No. 70-1984 is hereby adopted and incorporated by reference as a rule.

(b) Permanent wiring shall be subject to the following requirements:

1.-5. (No change.)

6. Electrical conductors other than flexible cords and fixture wires shall be protected against overcurrent in accordance with their ampacities.

(c) (No change.)

(d) (No change.)

12:195-3.15 Identification and rating plates

(No change in text.)

12:195-3.14 Non-destructive test

(a) The commissioner may require all critical mechanical and structural components including but not limited to journals, shafts, spindles and pins not visible to the naked eye to be subjected to non-destructive testing by the owner or operator.

(b) The owner or operator shall prepare a report in writing of the non-destructive tests performed.

(c) The report of the non-destructive tests shall include the following:

1. Name of owner or operator;

2. Date and location of test;

3. Name of ride;

4. Serial number of ride;

5. Name of firm that conducted the test;

6. The type of non-destructive test performed; and

7. Results and certification of results.

(d) The report required in (b) above shall be submitted to the commissioner. The owner or operator shall also advise the commissioner what corrective action, if any, has been taken as a result of the non-destructive tests.

12:195-3.16 Rebuilt or modified rides

(No change in text.)

12:195-3.17 Assembly and disassembly

(No change in text.)

- 12:195-3.18 Lighting
(No change in text.)
- 12:195-3.25 Proximity to high voltage lines
Amusement rides shall be located so that they conform to the requirements of the High Voltage Proximity Act, N.J.S.A. 34:6-47.1 et seq.
- 12:195-4.2 Construction
(a) (No change.)
(b)-(c) (No change.)
- 12:195-4.6 Walkways and ramps
(a) (No change.)
(b) (No change.)
(c) (No change.)
- 12:105-5.11 Warning signs
(a)-(b) (No change.)
(c) The sign as required by (a) above shall read as follows or express an equivalent warning:
The following people should not use this ride:
1. Those who are pregnant;
2. Those with heart conditions;
3. Those with serious back problems;
4. Those subject to motion sickness;
5. Those with serious health problems or serious physical disabilities;
and
6. Those under the influence of alcohol or drugs.
(d) The owner shall not post any sign which prohibits or discourages all handicapped persons from using the ride. For example "No Handicapped" shall not be used as an equivalent warning.

**SUBCHAPTER 6. STANDARDS AND PUBLICATIONS
REFERRED TO IN THIS CHAPTER**

- 12:195-6.1 Documents referred to by reference
(a) The full title and edition of each of the standards and publications referred to in this chapter is as follows:
1. ANSI A17.1-1978, Elevators, Dumbwaiters, Escalators and Moving Walks;
2. ANSI B77.1-1982, Aerial Passenger Tramways;
3. ASTM F698-1983, Physical Information to be provided for Amusement Rides and Devices;
4. ASTM F747-1982, Definitions of Terms Relating to Amusement Rides and Devices;
5. ASTM F770-1983, Operation Procedures for Amusement Rides and Devices;
6. ASTM F846-1983, Testing Performance of Amusement Rides and Devices;
7. ASTM F853-1983, Maintenance Procedures for Amusement Rides and Devices;
8. ASTM F893-1984, Inspection of Amusement Rides and Devices;
9. BOCA-1981, Basic Building Code;
10. NFPA No. 70-1984, National Electrical Code;
11. NJAC 12:90, Boilers, Pressure Vessels and Refrigeration;
12. NJAC 5:23, Uniform Construction Code;
13. N.J.S.A. 5:3-31 et seq., Carnival-Amusement Ride Safety Act;
14. N.J.S.A. 17:22 et seq., Surplus Lines Law;
15. N.J.S.A. 34:6-47:1 et seq., High Voltage Proximity Act;
- 12:195-6.2 Availability of documents for inspection
A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:
New Jersey Department of Labor
Division of Workplace Standards
36 West State Street, Room 311
Trenton, New Jersey
- 12:195-6.3 Availability of documents from issuing organization
Copies of the referred to standards and publications in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning, and are the organizations issuing the standards and publications listed in N.J.A.C. 12:195-6.1.
ANSI—American National Standards Institute
1430 Broadway
New York, New York, 10018
ASTM—American Society for Testing and Materials
1916 Race Street
Philadelphia, Pa. 19103

- BOCA—Building Officials and Code Administrators
4051 West Flossmoor Road
Country Club Hills, Illinois 60477-5795
- NFPA—National Fire Protection Association
Batterymarch Park
Quincy, Massachusetts 02269
- NJAC—New Jersey Administrative Code
12:90 Copies available from:
Office of Boiler and Pressure Vessel
Compliance
New Jersey Department of Labor
CN 392
Trenton, N.J. 08625-0392
- NJAC—New Jersey Administrative Code
5:23 Copies available from:
Construction Code Enforcement Bureau
Department of Community Affairs
Central Services/Publications
CN 805
Trenton, N.J. 08625-0805
- NJSA—New Jersey Statutes Annotated
Copies available from:
Office of Safety Compliance
New Jersey Department of Labor
CN 386
Trenton, N.J. 08625-0386

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CRIMINAL JUSTICE

**Police Training Commission
Certification Requirements for Instructors of
Specialized Subjects**

Adopted Amendment: N.J.A.C. 13:1-4.6

Proposed: February 18, 1986 at 18 N.J.R. 397(a).
Adopted: May 7, 1986 by Police Training Commission, Donald
R. Belsole, Chairman.

Filed: May 23, 1986 as R.1986 d.235, **without change.**

Authority: N.J.S.A. 52:17B-71h.

Effective Date: June 16, 1986.

Expiration Date: July 19, 1988.

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

Full text of the adoption follows.

- 13:1-4.6 Certification requirements for instructors of specialized subjects
(a) Applicants who seek certification to instruct in specialized subjects must possess the basic qualifications set forth in N.J.A.C. 13:1-4.1 through 13:1-4.4 and, further, must comply with the following requirements:
1. An individual seeking certification to serve as a firearms instructor must successfully complete a commission-recognized firearms instructor course. Under the immediate supervision of a school's Range Master, the individual must successfully:
i. Demonstrate knowledge of the established range safety rules;
ii. Identify the major parts of the handguns and shotguns used in the training program;
iii. Demonstrate ability to handle handguns and shotguns safely under conditions such as the following:
(1) Loading and unloading;
(2) Using loading devices;
(3) Clearing ammunition and weapon malfunctions;
(4) Cleaning and maintaining weapons properly.
iv. Score no less than 92 in the commission-required firearms course.
2. In order to be eligible for recertification, instructors used for firearms training must annually satisfy the Range Master of their ability to perform the requirements as set forth in (a)1 above.
3. (No change.)

(a)

**DIVISION OF ALCOHOLIC BEVERAGE CONTROL
Amusement Games Control Bureau
Conduct of Licensees and Operation of Licensed
Games; Certification of Games**

**Adopted Amendments: N.J.A.C. 13:3-3.4, 3.8, and
7.9.**

Adopted New Rule: N.J.A.C. 13:3-3.17.

Proposed: April 7, 1986 at 18 N.J.R. 613(a).

Adopted: May 20, 1986 by John F. Vassallo, Jr., Director,
Division of Alcoholic Beverage Control, and Amusement
Games Control Commissioner.

Filed: May 22, 1986 as R. 1986 d.218, **without change.**

Authority: N.J.S.A. 5:8-79, 5:8-79.1, and 8-85.

Effective Date: June 16, 1986.

Expiration Date: August 1, 1988.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:3-3.4 Maximum fee for participation in game

No licensee shall charge or accept, or allow, permit or suffer, directly or indirectly, the charging or accepting of more than \$1.00 from any one player or participant in any one amusement game for each single or multiple entry fee or payment for the privilege of participating in the game, except that the maximum charge for participation in any arcade game certified in Subchapter 7 (Certification of Permissible Games) under certification No. 2 shall not exceed \$0.50 for any one game or play. Upon receipt of currency greater than \$1.00 the licensee must remit the appropriate change to the player immediately.

**13:3-3.8 Deceptive, fraudulent or misleading advertising
or practice; conduct of games**

(a) (No change.)

(b) All games, including free, sample or tryout games, must be conducted in their original certified form and any changes must receive prior written authorization by the Commissioner.

(c) (No change.)

13:3-3.17 Required signs

(a) Rules and instructions for the game must be clearly and conspicuously posted on a sign entitled "Rules." Minimum size for rule signs is 8½ inches by 11 inches with readable letters at least one-half inch high. The color of the print and background material must be contrasting.

(b) The price to play must be clearly posted and visible from all player positions. If the price to play is not on the rules sign, it must be on a sign with the minimum dimensions of 5 inches by 5 inches, with the color of the print and background material contrasting.

13:3-7.9 Permissible amusement games certifications

(a) Pursuant to P.L. 1959, c.108 and this subchapter there is hereby granted certification of permissibility for licensing of the following amusement games:

1.-3. (No change.)

4. Certification No. 4. Competitive games wherein several players upon payment of fee are permitted to compete against each other for a prize to be awarded to the player who first achieves the required result, generally known as the Bowl Game, Fascination Game, Greyhound Game, Skilo Game, Throw Fascination Game, and Water Gun Game, and such similar games as may from time to time be certified pursuant to this subchapter. A Stop and Go Game type of installation, as set forth in (a)5 below (Certification No. 5), and subject to the same requirements, limitations and restrictions contained in (a)5 below, may be utilized in the conduct of such games.

i. Only one of the above games may be licensed under one license.

ii. There is no restriction on the number of units that may comprise the game.

5.-8. (No change.)

9. Certification No. 9. A game of chance incorporating a laydown board marked in segments bearing numbers, names or symbols whereon the player or players place the entry fee as an indication of the choice of expected winner, which is determined by a nonelectrical and

nonmechanical device, set in motion by a player or players, coming to rest, generally known as Pan Game, Crazy Ball and Crazy Block.

i. Only one of the above games may be licensed under one license.

(b)

BOARD OF MEDICAL EXAMINERS

Termination of Pregnancy

Adopted Amendment: N.J.A.C. 13:35-4.2

Proposed: April 7, 1986 at 18 N.J.R. 614(a).

Adopted: May 14, 1986 by New Jersey State Board of Medical
Examiners, Edward W. Luka, M.D. President.

Filed: May 22, 1986 as R. 1986 d.217, **with technical changes** not
requiring additional notice and comment (see N.J.A.C.
1:30-4.3).

Effective Date: June 16, 1986.

Expiration Date: November 19, 1989.

Summary of Public Comments and Agency Responses:

Notice of the proposed amendment was sent to the Board's usual notice list as well as New Jersey licensed outpatient facilities performing abortion procedures, UMDNJ, Department of Obstetrics-Gynecology, Planned Parenthood, some physicians performing office abortion procedures and other interested persons or organizations. One public comment was submitted by an attorney contending that the rule would mandate unconstitutionally extensive record keeping requirements which would require abortion facilities to hire additional staff and then to increase service costs. He did not offer any detail regarding why such additional staff would be needed nor the numbers nor the additional cost anticipated. No other commenter offered those criticisms.

The Board interprets the criticisms as two fold: (1) that the Board is "singling out" abortion procedures for regulation and is doing so in an impermissible way, and (2) that the cost of compliance with the rule will be prohibitive and unnecessary. The Board rejects both contentions. The purpose and function of Second-trimester record-keeping requirements are the preservation of maternal health and life by compiling relevant health data and monitoring procedures to assure that the procedures are done in accordance with law. The record preserves patient's confidentiality and privacy. Such requirements have been held to be in the public interest and permissible. The rule now requires no individual patient record keeping for any procedure prior to the 19th week LMP. The amendment mandates certain record keeping requirements solely for patients receiving abortions at and after 19 weeks LMP. Some 90 percent of all abortions performed in this country are performed during the first trimester; of the remainder, about 8 percent are believed to be within the 13th and 20th week and only one percent beyond that stage. The Board rule applies solely to procedures during the 19th week and beyond, which are unlikely to include more than a small number of cases.

The record requirements which must be reported or made available for inspection by the Board pertaining to that small number are simple statistics which would be expected to be maintained in any properly run clinic even in the absence of rule. For example: the total number of patients in that small category; of that number, those who left the premises after insertion of medical devices designed to result in abortion but who failed to complete the procedure under the care of the physician who began it—thereby exposing the patient to unattended medical problems or to arrival at a hospital for emergency admission. Also required are the number of patients who do report for post-operative visits, which assures the opportunity to see that there has been safe recovery. Further, the number who needed blood transfusions; those suspected of suffering perforation of the uterus by the operating surgeon; those developing pelvic inflammatory disease within two weeks of the abortion; those needing hospital admission within two weeks; and those who have died within 30 days of the procedure. Virtually all of these statistics are part of ongoing responsible practice at clinics conducted by national organizations respected for their patient care policies. A clinic medical director would need to know these statistics in order to properly monitor quality of care at the facility including credentialing of medical staff. The required records are easily compiled, especially at a clinic which offers primarily one type of service. The Board finds the data to be reasonable and appropriate for the advanced second trimester abortions performed in a facility which does not contain all of the resources of a licensed hospital.

An additional letter was received from the same attorney, this time identifying his clinic client. On behalf of the clinic owner, he appears to contend that there is no need for the surgeon performing the late trimester abortion to have admitting privileges at a hospital, so long as a physician not affiliated with the clinic has "a formal complication back-up relationship with the surgi-center. The [sic] would permit physicians back-up utilization to function according to the necessities of the physician and hospital demographics of any area of the State." The Board finds this obscure, but to the extent he is suggesting that the patient should rely on an agreement between the third-party clinic and some other physician to be readily available for emergency surgery, the Board rejects it. The operating surgeon may, if desired, utilize such a relationship but must not be dependent upon it. The Board also notes that the commenter included no geographical limitation, thus theoretically allowing a patient in an emergency situation to be transported to any distant hospital where the non-affiliated physician might be. These suggestions are unacceptable. The same writer complained that the surgical privileges and expertise of the medical director of the clinic should be evaluated by other members of the same facility, rather than as proposed by the Board—being evaluated by a medical director of a similar but independent clinic or by the chief of department of a hospital. The suggestion is rejected because the circumstance of a private office setting with a small number of physicians who are directly or indirectly employed there based on the decision of the medical director, obviously presents too much of a conflict of interest to protect the public considering the degree of risk inherent in late D & E procedures in a non-hospital setting. The same writer urged that the Board take no role in determining ability to perform D & E procedures at greater than 20 weeks LMP in the non-hospital setting; he suggested all such decisions should be left entirely to the medical staff of the "institution" and seemed to equate that setting with hospitals. The Board find the comparison inept, and the risks too great to be ignored by this Board considering the substantial increase in morbidity at that stage. The Board is satisfied that the rule amendment now adopted adequately provides flexibility and convenience to the public in choosing a location for the surgical procedure, while assuring a reasonable degree of structure, planning and follow-up while the safety and adequacy of this new setting is developed.

The Board has determined to make one modification in the adoption. Subsection (f) presently requires that a physician planning to perform a D & E procedure after 18 weeks LMP and through 20 weeks LMP in a licensed ambulatory care facility shall first file with the Board a certification signed by the medical director that the physician meets specified eligibility standards and shall comply with those requirements "and the current guidelines of the Board interpreting the rule." As the proposed amendment deleted all reference to guidelines, the above phrase is superfluous and is therefore deleted.

Full text of the adoption follows (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 is 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 regulatory 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 procedures 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) Provisions 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 stage 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]*.

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 15 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 subsection (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 Credentials 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 or 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 two weeks of the procedure;
- ix. Number of patients who died within 30 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 rules of the Department of Health applicable to an LACF.

(a)

NEW JERSEY RACING COMMISSION

**Thoroughbred Rules: Claiming Races on the Flat;
Restrictions**

Adopted Amendments: N.J.A.C. 13:70-12.1 and 12.2

Proposed: March 17, 1986 at 18 N.J.R. 546(a).

Adopted: May 15, 1986 by Bruce H. Garland, Executive Director,
New Jersey Racing Commission.

Filed: May 19, 1986 at R.1986 d.215, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: June 16, 1986.

Expiration Date: February 25, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:70-12.1 Claiming races on the flat

In claiming races on the flat, any horse is subject to claim for its entered price by any owner who has started a horse on the flat at the meeting at which the claim is made and who also has been assigned stalls on a permanent basis on the premises of a licensed New Jersey racetrack, or who has been assigned stabling at an approved farm in the State of New Jersey.

13:70-12.2 Restrictions: claiming privileges

The stewards at their discretion may permit an owner racing from out-of-state to replace a horse claimed from him even though the owner does not meet the stabling requirements of N.J.A.C. 13:70-12.1.

TRANSPORTATION

TRANSPORTATION OPERATIONS

(b)

Speed Limits

**Routes I-80 in Warren County, I-287 in Morris County
and 94 in Sussex County**

**Adopted Amendments: N.J.A.C. 16:28-1.2, 1.3, and
1.79**

Proposed: April 7, 1986 at 18 N.J.R. 621(a).

Adopted: May 14, 1986 by John F. Dunn, Jr., Assistant Chief
Engineer, Traffic and Local Road Design.

Filed: May 14, 1986 as R.1986 d.210, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Effective Date: June 16, 1986.

Expiration Date: November 7, 1988.

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

Full text of the adoption follows.

16:28-1.2 Route I-80 including Littleton Road and Cherry Hill interchange, Parsippany-Troy Hills, Frontage Road number 2, Paterson, Landing Road interchange, and Smith Road interchange.

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

(e) (See adoption at 18 N.J.R. 1104(d).)

(f) The rate of speed designated for the certain parts of State highway Route I-80 eastbound within the entire parking lots of the Rest Area described in this section shall be established and adopted as the maximum legal rate of speed thereat:

- 1. Within the Rest Area in Knowlton Township, Warren County:
 - i. 20 miles per hour within the entire parking areas (vicinity of milepost 7.50).

16:28-1.3 Lafayette Avenue: Route I-287

(a) (No change.)

(b) The rate of speed designated for the certain parts of State highway Route I-287 within the entire parking lots of the Rest Area described in this section shall be established and adopted as the maximum legal rate of speed thereat:

- 1. Within the Rest Area in Harding Township, Morris County:
 - i. 20 miles per hour within the entire parking areas.

16:28-1.79 Route 94

(a) The rate of speed designated for the certain parts of State highway Route 94 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

- 1. For both directions of traffic:

i.-ix. (No change.)

x. 40 miles per hour to the intersection of Summit Avenue, Town of Newton, Sussex County; thence

xi. 30 miles per hour to the Intersection of Spring Street:

(1) 30 miles per hour between Summit Avenue and Liberty Street; thence

(2) 25 miles per hour between Liberty Street and High Street—Park Place (Route U.S. 206 intervenes here).

xii.-xxi. (No change.)

- 2. For Counter Clockwise Directions of traffic:

i. 25 miles per hour between High Street—Park Place and Park Place—High Street.

(a)**Restricted Parking and Stopping
Routes U.S. 9 in Ocean County; 27 in Union County;
35 in Monmouth County and 47 in Cape May
County****Adopted Amendments: 16:28A-1.7, 1.18, 1.25 and
1.33**

Proposed: April 7, 1986 at 18 N.J.R. 622(a).

Adopted: May 14, 1986 by John F. Dunn, Jr., Assistant Chief
Engineer, Traffic and Local Road Design.Filed: May 14, 1986 as R.1986 d.208, **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: June 16, 1986.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:**No comments received.****Full text of the adoption follows.****16:28A-1.7 Route U.S. 9**

(a) (No change.)

(b) The certain parts of State highway Route U.S. 9 described in this 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.-16. (No change.)

17. Along the westerly (southbound) side in Dover Township, Ocean County:

i. Near side bus stops:

(1) (No change.)

(2) Roberts Road—Beginning at the northerly curb line of Roberts Road and extending 105 feet northerly therefrom.

18.-41. (No change.)

16:28A-1.18 Route 27

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

(c) The certain parts of State highway Route 27 described in this section are designated and established as "restricted parking" zones, for use by persons who have been assigned special Vehicle Identification Cards by the Division of Motor Vehicles. No other person shall be permitted to park in these areas.

1. (No change.)

(d) The certain parts of State highway Route 27 described in this section are designated and established as "no parking" zones for designated curb loading zones and 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 parking at loading zones (all times) (for Burry Cookie Co.) in Elizabeth City, Union County:

i. (No change.)

ii. Along the east curb line of Cherry Street:

(1) Beginning at a point 170 feet south of W. Jersey Street and continuing 51 feet southerly thereof between the hours of 8:00 A.M. and 4:30 P.M. from Monday through Saturday.

(e) (No change.)

16:28A-1.25 Route 35

(a) (No change.)

(b) The certain parts of State highway Route 35 described in this section are designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1.-11. (No change.)

12. Along the northbound (westerly) side in Aberdeen Township, Monmouth County:

i. Near side bus stop:

(1) Cliffwood Avenue—Beginning at the southerly curb line of Cliffwood Avenue and extending 105 feet southerly therefrom.

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

16:28A-1.33 Route 47

(a) The certain parts of State highway Route 47 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. No stopping or standing in Middle Township, Cape May County:

i. Along both sides:

(1) (No change.)

(2) Between milepost 3.0 and milepost 4.1 including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

ii.-iii. (No change.)

2. No stopping or standing in the City of Millville, Cumberland County:

i. Along the northbound side:

(1) From a point 75 feet south of the southerly curb line of Mulberry Street to a point 75 feet north of the northerly curb line of Mulberry Street.

(2) From the northerly curb line of Vine Street to a point 75 feet north of the northerly curb line of East Oak Street.

(3) From the northerly curb line of "F" Street to the Millville-Vineland Corporate Line.

ii. Along the southbound side:

(1) From the Vineland-Millville Corporate Line to a point 365 feet south of the prolongation of the southerly curb line of Whitall Avenue.

iii. Along both sides:

(1) From a point 1,715 feet north of the southerly curb line of Orange Street to a point 350 feet north of the northerly curb line of Orange Street.

3.-8. (No change.)

9. (No change in text.)

(b) (No change.)

(b)**No Passing Zones****Routes 35 in Monmouth County and 28 in Middlesex
and Somerset Counties****Adopted Amendment: N.J.A.C. 16:29-1.51****Adopted New Rule: N.J.A.C. 16:29-1.57**

Proposed: April 7, 1986 at 18 N.J.R. 623(a).

Adopted: May 14, 1986, John F. Dunn, Jr., Assistant Chief
Engineer, Traffic and Local Road Design.Filed: May 14, 1986 as R.1986 d.207, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-201.1.

Effective Date: June 16, 1986.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:**No comments received.****Full text of the adoption follows.****16:29-1.51 Route 35**

(a) The following certain parts of State highway Route 35 shall be designated and established as "No Passing" zones:

1. (No change.)

2. The part within the Townships of Wall and Neptune, the Boroughs of Neptune City and Red Bank, Monmouth County and described in drawing number HNPZ-091 dated October 18, 1985.

16:29-1.57 Route 28

(a) The following certain parts of State highway Route 28 shall be designated and established as "No Passing" zones:

1. That part within the Boroughs of Middlesex and Dunellen, Middlesex County and described in drawing number HNPZ-093 dated December 2, 1985.

2. That part within Bridgewater Township, the Boroughs of Raritan, Somerville and Bound Brook, Somerset County and described in drawing number HNPZ-092 dated December 2, 1985.

OFFICE OF ADMINISTRATIVE LAW NOTE: A proposal to amend N.J.A.C. 16:29-1.57 appears in this issue of the New Jersey Register.

(a)

**Turns
Routes U.S. 46 in Morris County and Route 31 in
Hunterdon County**

Adopted Amendments: 16:31-1.3 and 1.18

Proposed: April 7, 1986 at 18 N.J.R. 625(a).
Adopted: May 14, 1986 by John F. Dunn, Jr., Assistant Chief
Engineer, Traffic and Local Road Design.
Filed: May 14, 1986 as R.1986 d.209, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-183.6.
Effective Date: June 16, 1986.
Expiration Date: November 7, 1988.

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

Full text of the adoption follows.

16:31-1.3 Route U.S. 46

(a) Turning movements of traffic on the certain parts of State highway
Route U.S. 46 described in this section are regulated as follows:

1. No left turns in Mount Olive Township, Morris County:
 - i. East on Route U.S. 46 to north of the westerly entrance of Village Drive.
 - ii. From Route U.S. 46 eastbound into the Village Green Shopping Center driveway.
2. No left turn in the town of Dover, Morris County:

- i. North on Route U.S. 46 ramp to west on Richboynton Road.

16:31-1.18 Route 31

(a) Turning movements of traffic on the certain parts of State highway
Route 31 described in this section are regulated as follows:

1. No left turns in Clinton Township, Hunterdon County:
 - i. North on Route 31 to west into North Hunterdon Regional High School driveway.
 - ii. North on Route 31 to west onto the southernmost driveway of Beaverbrook Development known as Beaverbrook Driveway.

(b)

PUBLIC TRANSPORTATION

Autobuses: Public Liability Insurance

Adopted Amendment: N.J.A.C. 16:53-9.1

Proposed: April 7, 1986 at 18 N.J.R. 626(a).
Adopted: May 12, 1986 by James A. Crawford, Assistant
Commissioner for Transportation Services and Planning.
Filed: May 21, 1986 as R.1986 d.216, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 1:30-2.7, and 52:14B-4(c).
Effective Date: June 16, 1986.
Expiration Date: March 19, 1989.

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

Full text of the adoption follows.

16:53-9.1 Certificate of insurance or evidence of self-insurance

- (a)-(d) (No change.)
1.-3. (No change.)
4. Notwithstanding the requirements of (e) through (i) below, a replacement certificate may be in the form of an AIP Designation Notice Card. An AIP Designation Notice Card shall be valid as a replacement certificate for a period of 60 days from the date of the letter of authorization. The letter of authorization shall refer specifically to the use of the AIP Designation Notice Card as a replacement certificate and shall warrant that the Department shall be notified immediately upon the insured's receipt of actual or constructive notice of cancellation.
(e)-(n) (No change.)

TREASURY-GENERAL

(c)

DIVISION OF PENSIONS

Administrative Practices

**Elimination of PFRS Entry Age Limit; Transfers
Adopted New Rule: N.J.A.C. 17:1-12.7**

Proposed: April 7, 1986 at 18 N.J.R. 626(b).
Adopted: May 12, 1986 by Douglas R. Forrester, Director,
Division of Pensions.
Filed: May 15, 1986 as R.1986 d.211, **with technical change** not
requiring additional public notice and comment (See N.J.A.C.
1:30-4.3).

Authority: N.J.S.A. 52:18A-96 et seq.

Effective Date: June 16, 1986.

Expiration Date: June 6, 1988.

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

Full text of the adoption follows (addition to proposal shown in bold-
face with asterisk ***thus***).

17:1-12.7 Elimination of PFRS entry age limit; transfers

Any person whose position is included under the definition of "policeman or fireman" under Section 1 of P.L. 1944, c.255 (N.J.S.A. 43:16*A*-1 et seq.) who was denied enrollment in the Police and Firemen's Retirement system because of the entry age limit under Section 3 of this law, may transfer from the Public Employees' Retirement System to the Police and Firemen's Retirement System. The transfer application shall be filed no later than June 30, 1986. The transfer shall take effect on October 1, 1986. If a person files a transfer application before June 30, 1986, and dies or retires before October 1, 1986, the transfer shall be effective and the person or his beneficiaries shall receive the retirement or death benefits provided under the Police and Firemen's Retirement System.

OTHER AGENCIES

ELECTION LAW ENFORCEMENT COMMISSION

(d)

Designation of Joint Campaign Fund (Form SR-1)

Proposed Amendment: N.J.A.C. 19:25-9.2

Proposed: April 7, 1986 at 18 N.J.R. 630(a).
Adopted: May 23, 1986 by the Election Law Enforcement
Commission, Frederick M. Herrmann, Executive Director.
Filed: May 23, 1986 as R.1986 d.223, **without change**.

Authority: N.J.S.A. 19:44A-6.

Effective Date: June 16, 1986.

Expiration Date: January 9, 1991.

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

Full text of the adoption follows.

19:25-9.2 Designation of joint campaign fund (Form SR-1)

- (a)-(e) (No change.)
(f) A candidate filing a certification under this section and the designated campaign treasurer of the candidate signing the certification shall be liable, in addition to any other penalty provided by law, to the civil penalties provided by the act if the committee fails, neglects or omits to file any report or document at the time and in the manner prescribed by the act, or omits or incorrectly states any of the information required by the act in such report or document.

(a)**Contributions Made Immediately Before Election
Adopted Amendment: N.J.A.C. 19:25-10.6**

Proposed: April 7, 1986 at 18 N.J.R. 630(b).

Adopted: May 23, 1986 by the Election Law Enforcement

Commission, Frederick M. Herrmann, Executive Director.

Filed: May 23, 1986 as R.1986 d.224, **without change**.

Authority: N.J.S.A. 19:44A-6.

Effective Date: June 16, 1986.

Expiration Date: January 9, 1991.

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

Full text of the adoption follows:

19:25-10.6 Contributions made immediately before election

(a) (No change.)

(b) In lieu of the 48-hour notice requirement in (a) above, a continuing political committee, prior to any election in which the continuing political committee is participating, may file a single, cumulative report on a form provided by the commission of contributions received in excess of \$250.00. This report shall be filed on the eleventh day preceding the election. Contributions in excess of \$250.00 received by a continuing political committee before an election but not included on the 11-day preelection report are subject to 48-hour notice as provided in (a) above.

(c) Whether a contribution received by a continuing political committee qualifies for reporting hereunder shall be determined according to the calculation set forth in N.J.A.C. 19:25-11.4, except that the base for any proration shall be \$250.00 for the purposes of this regulation.

(b)**Inaugural Event Contributions****Adopted New Rules: N.J.A.C. 19:25-15.48, 15.49,
15.50 and 15.51**

Proposed: April 7, 1986 at 18 N.J.R. 631(a).

Adopted: May 23, 1986 by the Election Law Enforcement

Commission, Frederick M. Herrmann, Executive Director.

Filed: May 23, 1986 as R.1986 d.225, **without change**.

Authority: N.J.S.A. 19:44A-6 and 19:44A-38.

Effective Date: June 16, 1986.

Expiration Date: January 9, 1991.

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

Full text of the adoption follows:

19:25-15.48 Inaugural event contributions from joint checking account

(a) A contribution to a gubernatorial fund raising event by check drawn on a joint checking account shall be deemed to be made by the joint checking account owner whose signature appears on the check.

(b) If a check drawn on a joint checking account bears the signatures of more than one contributing owner, the contribution will be deemed to have been made equally by all contributing owners whose signatures appear on the check.

(c) If a check drawn on a joint checking account is accompanied by a written statement signed by each contributing owner and containing information identifying the amount of contribution of each contributing owner, the amount of the contribution made by each contributing owner shall be determined as specified in the signed written statement.

19:25-15.49 Inaugural event contributions from affiliated corporations or unions

A corporation, association or labor organization or any subsidiary, affiliate, branch, division, department or local unit of any such corporation, association or labor organization shall not make any contribution to a gubernatorial fund raising event which, when added to any other contribution by any related or affiliated corporation, association or labor organization, exceeds \$250.00 in the aggregate. Whether such corpor-

ation, association or labor organization is related or affiliated shall depend on the circumstances existing at the time of such contribution, including, but not by way of limitation, the degree of control or common ownership with related or affiliated corporations, associations or labor organizations, the source and control of funds used for such contributions and the degree to which the decisions whether or not to contribute, to what candidate and in what amount are independent decision.

19:25-15.50 Inaugural event contributions from partnerships or unincorporated associations

A contribution to a gubernatorial fund raising event by check drawn on a partnership account, or on an account of an unincorporated association or business, shall be deemed to be made by the individual whose signature appears on the check unless specific identification as to the contribution by other partners or members is contained on the check or on an accompanying written statement and the check is signed by each partner or member who is a contributor.

19:25-15.51 Inaugural event contributions from children or trusts

(a) A contribution to a gubernatorial fund raising event by a child under the age of 18 shall be deemed made by the parent who is responsible for the contribution unless:

1. The child is 14 years of age or older and a signed statement from the child and the child's parent or guardian is submitted to the commission that the decision to contribute was solely that of the child and the funds used to make the contribution were legally and beneficially controlled by the child and were not the proceeds of a gift made for the purpose of the contribution; or

2. The child is 11 years old or older and, in addition to the signed statements set forth in 1 above, evidence is submitted satisfactory to the commission that the child acted independently and with full knowledge of the contribution.

(b) A contribution to a gubernatorial fund raising event by a check drawn on an escrow or trust account shall be deemed to be made by the person who is the beneficial owner of the account, and the check or an accompanying written instrument must bear the signature of such beneficial owner.

(c)**Default for Failure to Answer Complaint****Adopted New Rule: N.J.A.C. 19:25-17.1**

Proposed: April 7, 1986 at 18 N.J.R. 632(a).

Adopted: May 23, 1986 by the Election Law Enforcement

Commission, Frederick M. Herrmann, Executive Director.

Filed: May 23, 1986 as R.1986 d.226, **without change**.

Authority: N.J.S.A. 19:44A-6, 19:44A-38, 19:44B-7 and 52:13C-22.3.

Effective Date: June 16, 1986.

Expiration Date: January 9, 1991.

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

Full text of the adoption follows:

SUBCHAPTER 17. COMPLAINTS AND OTHER PROCEEDINGS**19:25-17.1 Default for failure to answer complaint**

In any penalty proceeding undertaken by the commission pursuant to N.J.S.A. 19:44A-22, 19:44A-41, 19:44B-8 or 52:13C-22.2 or other statutory authority the commission may enter a Final Decision, including penalty, against any respondent who fails to file with the commission a written responsive pleading or answer within 20 days after service on such respondent in conformity with the rules of the New Jersey Office of Administrative Law of a copy of a complaint alleging a specific violation of the law within the commission's jurisdiction to enforce.

OFFICE OF ADMINISTRATIVE LAW NOTE: The existing text of Subchapter 17 in the New Jersey Administrative Code (N.J.A.C. 19:25-17) expired March 15, 1984 pursuant to Executive Order No. 66(1978). The ELEC has decided not to readopt those rules because it considers them unnecessary. The expired text will therefore be deleted from the Code.

(a)

CASINO CONTROL COMMISSION
Accounting and Internal Controls
Casino Licensee's Organization
Adopted Amendment: 19:45-1.11

Proposed: December 16, 1985 at 17 N.J.R. 2969(a).
Adopted: May 15, 1986 by Casino Control Commission, Walter
N. Read, Chairman.
Filed: May 16, 1986 as R. 1986 d.212, **without change**.
Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(j) and (l) and
5:12-99.
Effective Date: June 16, 1986.
Expiration Date: April 7, 1988.

Summary of Public Comments and Agency Responses:

The Commission received two written comments concerning the proposed amendment. One of the comments, from the Division of Gaming Enforcement (Division), was favorable to the proposal. The Division was in favor of the amendment for two reasons. First, it relaxes regulatory restraint in an area that is amenable to such relaxation, namely, the transfer of surveillance personnel to hotel positions within the same casino hotel. Second, the amendment also eliminates a potential security problem which has arisen in the Atlantic City casino industry, namely, the transfer of surveillance employees to casino employee or casino key employee positions within a casino hotel whose surveillance department is under the operational control of the same person who controlled the surveillance department in which they were previously employed. The Commission agrees with the comments submitted by the Division.

The second comment was submitted by the Atlantic City Casino Association (Association), and is summarized as follows:

COMMENT: The Association alleges that there is no need to restrict surveillance personnel from contracting with new employers, including other casino hotels. The Association suggests that the right to seek such employment is protected by the Constitution. Second, the Association suggests that the Act does not delegate the power to the Commission to impose this type of employment restriction on surveillance personnel. Third, the Association alleges that such a regulation will have a significant negative effect on business, since a surveillance department position will be perceived as one of limited potential by prospective employees, and the best qualified persons will not be attracted to these positions.

AGENCY RESPONSE: The Commission submits that the right to a particular job, unlike the right to work in general, is not fundamental, and is subject to reasonable measures to promote the general welfare under both the federal and New Jersey Constitutions. Here, the subject restriction is rationally related to the state's interest in preserving the public confidence and trust in the integrity of casino operations by mini-

mizing the harm which could be done by employees with knowledge of the methods and weaknesses of the surveillance program. The proposed amendment does not restrict the transfer of surveillance department personnel to hotel positions within any casino hotel, or to casino or key positions in another casino hotel whose surveillance department is not under the operational control of the same person who controlled the surveillance department in which such personnel were previously employed.

Second, the Act expressly authorizes the Commission to promulgate such regulations as in its judgment may be necessary to fulfill the policies of the Act. N.J.S.A. 5:12-63(c). See also N.J.S.A. 5:12-70(j) and 5:12-99. The Commission maintains that the subject amendment is essential to maintaining public confidence and trust in the integrity of casino operations. Moreover, the amendment is merely a codification of the Commission's interpretation of the existing regulation.

Third, the Commission recognizes that, though the amendment may place a heavier burden on some casino licensees or casino license applicants who choose to have their surveillance departments under the same operational control, since the pool of applicants for positions within their respective surveillance departments will be diminished, regulatory concerns in an area essential to the integrity of casino operations override issues of convenience for the industry.

Full text of the adoption follows.

19:45-1.11 Casino licensee's organization

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

(c) Each casino licensee shall, at a minimum, establish the following departments with respect to the casino operation:

1. (No change.)

2. In addition to the restrictions contained in the Casino Control Act and the regulations promulgated thereunder, no present or former surveillance department employee shall accept employment as a casino key employee or casino employee within the same casino hotel or prospective casino hotel in which the surveillance department employee was previously employed or within any other casino hotel or prospective casino hotel whose surveillance department is under the operational control of the same person who controlled the surveillance department in which the surveillance department employee was previously employed. However, the Commission upon being petitioned, may waive the restriction if:

i. One year has passed since the former surveillance department employee worked in the surveillance department; and

ii. Casino surveillance and security systems will not be jeopardized or compromised by the former surveillance department employee; and

iii. Errors, irregularities or illegal acts cannot be perpetrated and concealed by the former surveillance department employee's knowledge of the surveillance system.

3.-9. (No change.)

(d)-(g) (No change.)

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

(a)

Amendment to the Mercer County Water Quality Management Program

Public Notice

The Township of West Windsor has requested an amendment to the Mercer County Water Quality Management (WQM) Plan. This amendment would revise and update the WQM Plan to include development in the Assunpink Creek Watershed within West Windsor Township currently served by central sewage treatment systems, and amend and expand the sewer service area and the sewage treatment franchise area of the Stony Brook Regional Sewerage Authority within West Windsor Township into the Assunpink Creek Watershed. In addition, as part of this amendment, a Wastewater Management Plan will be adopted to provide a plan for addressing the wastewater management needs of the Township.

The amendment would enable an additional area of approximately 1,120 acres north of Assunpink Creek to be served by the Downstream (Princeton) sewage treatment facilities of the Stony Brook Regional Sewerage Authority. This area generally includes the village of Dutch Neck, the Jefferson Park Sewage Treatment Plant and service area, the Mercer County Park North Picnic Area, and Edinburgh Park, Dutch Neck Estates, and neighboring land development subdivisions. The area in the Assunpink Creek would be removed from the existing sewage treatment franchise area of the Hamilton Township Municipal Utilities Authority.

This notice is being given to inform the public that a plan amendment has been proposed for the Mercer County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the Mercer County Planning Board, Room 420, County Administration Building, 640 South Broad Street, P.O. Box 8068, Trenton, N.J. 08650; and the NJDEP, Division of Water Resources, Bureau of Planning and Standards, 25 Arctic Parkway, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 a.m. and 4:00 p.m., Monday through Friday.

The Mercer County Planning Board will hold a **public hearing** on the proposed WQM Plan amendment. The public hearing will be on Wednesday, July 9, 1986 at 8:30 a.m. in Room 211 of the Mercer County Administration Building. **Interested persons** may submit written comments on the amendment until 15 days following the public hearing to the Secretary, Mercer County Planning Board, at the Mercer County address cited above; and George Horzempa, Bureau of Planning and Standards, at the NJDEP address cited above. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Planning Board and County Executive with respect to the amendment request. In addition, if the amendment is adopted by Mercer County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice and to the public hearing will also be considered by the NJDEP during its review. Mercer County and the NJDEP thereafter may approve and adopt this amendment without further notice.

(b)

DIVISION OF PARKS AND FORESTRY

Natural Areas and the Natural Areas System

Authority: N.J.S.A. 13:1L-1 et seq. and 23:2A-1 et seq.

Take notice that pursuant to the authority of N.J.S.A. 13:1L-1 et seq. and 23:2A-1 et seq. and in accordance with the directives contained in Administrative Order No. 11 executed on May 5, 1986, the Assistant Commissioner for Natural Resources has identified the following interim protective measures necessary for the preservation of ecological communities and relationships and the management of the bald eagle nesting site and other known and potential endangered species habitats in the Bear Swamp East Natural Area:

(1) An area of 1100 acres (±), bounded on the north by the Central Railroad of New Jersey right-of-way beyond which is the Edward G. Bevan Wildlife Management Area, on the east by the Downe-Commercial Township line and the Whitehead Brothers Company property line, on the south by Hayleyville Road and property lines extending west therefrom to Cedar Creek, and on the west by Cedar Creek, designated as a "critical eagle management zone" that includes the bald eagle nest site, shall be posted as a "restricted area" wherein unauthorized entry shall be prohibited from January 15 to August 1 of each year;

(2) No unauthorized vehicular use of the six unimproved roads on the Bear Swamp East Natural Area and one unimproved road on the adjacent Edward G. Bevan Wildlife Management Area affording access to the aforementioned "critical eagle management zone" shall be allowed, such unauthorized use to be physically impeded by the erection and maintenance of earthen mounds pending the erection of permanent gates.

The Bureau of Law Enforcement, Division of Fish, Game and Wildlife, shall take all necessary and appropriate enforcement action in accordance with these interim protective measures.

HEALTH

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

(c)

Change of Regional Cardiac Diagnostic and Surgical Services, Modernization/Renovation and Equipment Certificate of Need Batching Cycle.

Public Notice

Take notice that the Commissioner of Health, in cooperation with the Health Care Administration Board, has changed for one time only the batching cycle, scheduled to begin October 15, 1986, for certificate of need applications for Cardiac Diagnostic and Surgical Services, Modernization/Renovation and Equipment.

The batching cycle for certificate of need applications scheduled to begin on October 15, 1986 is being changed. The next deadline for the submission of new or revised certificate of need applications for Cardiac Diagnostic and Cardiac Surgery equipment and services will be January 1, 1987 for the cycle beginning February 15, 1987.

The changes are for one time only and shall have no effect on subsequent batching cycles for certificate of need applications for Regional Cardiac Diagnostic and Cardiac Surgery equipment and services. During 1987, the batching cycles for Cardiac Diagnostic and Cardiac Surgery certificate of need applications will once again commence on February 15, June 15 and October 15.

This one time change in the cycles for the review of certificate of need applications for Regional Cardiac Diagnostic and Cardiac Surgery services is being implemented in order to allow sufficient time for a complete review of State policies in regard to cardiac services to be conducted by a Cardiac Services Task Force convened by the Department of Health. Final recommendations from the Task Force are not expected prior to the conclusion of the October 15, 1986 cardiac services batching cycle.

Deferral of the October 15, 1986 cardiac services batching cycle will allow the completion of the Commissioner of Health's Task Force recommendations in time for the next cardiac services batching cycle of February 15, 1987.

Any inquiries should be addressed to:

John A. Calabria, Chief
Health Systems Review
New Jersey Department of Health
Room 604
CN 360
Trenton, NJ 08625

(a)

Extracorporeal Shock Wave Lithotripsy (ESWL) Services

Public Notice

Take notice that the Department of Health, in conjunction with the Statewide Health Coordinating Council (SHCC), has proposed amendments to its rule regarding Extracorporeal Shock Wave Lithotripsy (ESWL) Services (N.J.A.C. 8:33B-1.1 et seq.). The amendments (see 18 N.J.R. 798(a)) propose the addition of a third site for the demonstration of ESWL Services. The amendments to the ESWL rule are expected to be adopted by the Health Care Administration Board at their June 12 meeting and will be published in the July 7 issue of the New Jersey Register. Once the proposed amendments have completed the regulatory process with their final adoption and publication in the New Jersey Register, copies may be obtained from:

John A. Calabria, Chief
Health Systems Review
New Jersey Department of Health
Room 604
CN 360
Trenton, New Jersey 08625

Applications for an additional ESWL demonstration site through the Certificate of Need process are presently expected to be accepted for processing on August 1, 1986 for the September 15, 1986 cycle. Forms will be available from:

Susan M. Hendrickson, Esq., Chief
Certificate of Need Program
New Jersey Department of Health
Room 604
CN 360
Trenton, New Jersey 08625

Until such time that the proposed amendments to the rule become effective, the Department will not accept Certificate of Need applications proposing an additional site for the demonstration of Extracorporeal Shock Wave Lithotripsy (ESWL) services for processing.

(b)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Public Hearing to Gather Information prior to the Development of Planning Rules to Cardiac Services

Public Notice

Take notice that the Department of Health, in coordination with the Cardiac Services Task Force, is announcing a public meeting to give opportunity for public participation in the formulation of planning strategies which will allow for the provision of state-of-the-art cardiac care services in New Jersey while maintaining standards of quality, economy and access.

The public meeting will be conducted by the Cardiac Services Task Force which has been commissioned to examine New Jersey's planning requirements for the provision of invasive cardiac diagnostic and catheterization services and cardiac surgery services in view of technological innovations taking place in the treatment of cardiovascular disease. The Task Force will also recommend how the State might best address issues of quality, cost and access in the provision of cardiac services as a whole.

The meeting will be held on Monday, July 7, 1986 at 10:00 A.M. at the following location:

Center for Health Affairs
760 Alexander Road
Princeton, New Jersey

If further information is needed regarding this meeting please contact:

Theodore C. Seamans, Executive Assistant
Office of the Commissioner
New Jersey Department of Health
CN 360
Trenton, NJ 08625-0360
(609) 633-7531

(c)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Current Proposed Capital and Reimbursement Policies

Public Hearing

Take notice that the Department of Health, in coordination with the Health Care Administration Board is announcing a public meeting and education forum to be held for the review and discussion of current and proposed Department of Health policies and rules concerning capital and reimbursement.

New Jersey has been the leader nationally in achieving efficiencies in the hospital system through policies and procedures which encourage a rational development of the hospital care system. It is imperative that New Jersey once again take the leadership role in these difficult times of resource constraint, by demonstrating to the nation the most rational approach to cost-effectiveness without sacrificing access, quality of care or equity of payment. This public forum will serve as the catalyst to continue towards those goals.

The meeting will be held on Thursday, July 10, 1986 at 1:00 P.M. at:

New Jersey Department of Health
Room 103, First Floor
Market and South Warren Streets
Trenton, NJ 08625

If further information is needed on this subject please contact:

John A. Calabria, Chief
Health Systems Review Program
CN 360, Room 604
Trenton, NJ 08625
(609) 292-5960

COMMUNITY AFFAIRS

(d)

DIVISION OF HOUSING AND DEVELOPMENT

State-Sponsored Code Changes: Uniform Construction Code

Notice of Public Hearing: Correction

Take notice that the Notice of Public Hearing published in the June 2, 1986 Register at 18 N.J.R. 1124(a) erroneously indicated that the subject matter of the public hearing concerned Barrier-Free Subcode changes. The notice should have indicated that the hearing would provide a public forum for any interested person to submit recommendations on State-sponsored Code changes, that is, all subcodes other than the Barrier-Free Subcode. The public notice should have appeared as follows:

Take notice that a public hearing to receive proposals for State-sponsored Code changes will be held at 10:00 A.M. on Friday, June 20, 1986 at the offices of the Bureau of Construction Code Enforcement, 1333 Brunswick Circle, Trenton, New Jersey. It is requested that specific code language be provided for any recommended changes and that copies of any proposals be made available at the hearing or be mailed to the Bureau of Construction Code Enforcement at CN 805, Trenton, N.J. 08625 (Attention: Mrs. Amy F. Frank) prior to the hearing date.

(e)

Uniform Construction Code

Barrier-Free Subcode

Notice of Extension of Comment Period

Take notice that the deadline for public comments on the Barrier-Free Subcode, proposed at 18 N.J.R. 757(a), is extended to June 20, 1986, as previously published.

TREASURY-GENERAL

(a)

DIVISION OF BUILDING AND CONSTRUCTION

**Architect-Engineer Selection
Notice of Assignments—Month of April**

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, pre-qualified New Jersey consulting firms. For information on DBC's pre-qualification and assignment procedures, call (609) 984-6979.

Last list dated April 3, 1986.

The following assignments have been made:

DBC No.	PROJECT	A/E	CCE
M662-01	Window Replacement Division of Youth & Family Services Ewing and Vineland Residential Centers	Thomas E. Torricelli, AIA	\$100,000
M906	Energy Conservation Measures Johnstone Developmental Center Bordentown, NJ	Roy Larry Schlein & Associates	\$136,757
H864	Computer Room Modifications Ramapo College Mahwah, NJ	A. D. Jilajian & Associates	\$ 20,000
Y008	Facility Consultant Dept. of Transportation	Vincent E. Paolicelli & Associates	\$ 15,000 Services
X008	Facility Consultant Division of State Police	Eugene F. O'Connor, AIA	\$ 12,500 Services
X009	Facility Consultant Division of State Police	J. M. Di Giacinto & Associates	\$ 12,500 Services
R004	Facility Consultant Department of Human Services	John C. Morris, Assoc., Inc.	\$ 10,000 Services
M678	Sanitary Sewage System Renovations North Jersey Developmental Center Totowa, NJ	Keller & Kirkpatrick PA	\$ 90,000
E156	Roof Replacement Various Buildings Marie Katzenbach School for the Deaf West Trenton, NJ	Matthew L. Rue, AIA	\$200,000

COMPETITIVE PROPOSALS

Matthew L. Rue, AIA	9.89%
Richard M. Horowitz, AIA	9.90%
Joseph N. Wirth & Associates	10.75%

C083	Water System Renovations Central Office Dept. of Corrections Trenton, NJ	Richard A. Alaimo Associates	\$300,000
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COMPETITIVE PROPOSALS

Richard A. Alaimo Associates	5.95%
Kupper Associates	8.00%
Metcalf & Eddy, Inc.	8.88%

S204	Handicapped Renovations DMV Stations, Eatontown, Lodi, Rahway, Trenton, Wayne	Dalim Sibdal Sau, AIA	\$240,000
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COMPETITIVE PROPOSALS

Dalim Sibdal Sau, AIA	9.10%
Armstrong, Jordan, Pease, AIA, PA	15.0%
George J. Williams & Assoc.	17.5%

P488	New Administrative Facility Washington Crossing State Park Hopewell Township, NJ	Sang J. Lee, Architect	\$245,000
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COMPETITIVE PROPOSALS

Sang J. Lee, Architect	10.75%
Joseph N. Wirth & Associates	9.85%
Matthew L. Rue, AIA	10.79%

M907	Boiler Replacement and Powerhouse Improvements Woodbine Developmental Center Woodbine, NJ	D'Ambly, Inc.	\$251,500
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COMPETITIVE PROPOSALS

D'Ambly, Inc.	5.90%
Borda Engineers & Energy Consultants	7.20%
Maitra Associates	9.50%
M. Benton & Associates	10.87%

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

**Petition for Rulemaking
New Craps Wager "Over 7/Under 7"**

**N.J.A.C. 19:47-1.2 and 1.4;
N.J.A.C. 19:46-1.11**

Petitioner: Fra-Ton, Inc.

Authority: N.J.S.A. 5:12-69, 5:12-70f and 5:12-100e.

Take notice that on May 1, 1986, Fra-Ton, Inc., a New Jersey corporation, filed a petition with the Casino Control Commission requesting amendments to N.J.A.C. 19:47-1.2 and 1.4 and N.J.A.C. 19:46-1.11 concerning the adding of a new bet to the game of craps.

N.J.A.C. 19:47-1.2 currently provides for nineteen permissible wagers. The amendment to N.J.A.C. 19:47-1.2 proposed by Fra-Ton, Inc. would add to that list of wagers a bet entitled "Over 7/Under 7" which would allow the bettor to choose whether the total of the dice thrown will be over 7 or under 7. N.J.A.C. 19:47-1.4 currently provides for payout odds on permissible wagers. The amendment to N.J.A.C. 19:47-1.4 proposed by Fra-Ton, Inc. would add payout odds for "Over 7/Under 7". The house would pay even money to the bettor correctly choosing over 7, but would pay 5 to 1 if the total of the dice is 12, and would pay even money to the bettor correctly choosing under 7, but would pay 5 to 1 if the total of the dice is 2. N.J.A.C. 19:46-1.11 currently describes the physical characteristics of a craps table. The amendment to N.J.A.C. 19:46-1.11 proposed by Fra-Ton, Inc. would require a minor alteration of the board to provide a location for the placement of "Over 7/Under 7" wagers.

After due notice, this petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 5:12-69c.

**REGISTER INDEX OF RULE PROPOSALS
AND ADOPTIONS**
The research supplement to the New Jersey Administrative Code

**A CUMULATIVE LISTING OF CURRENT
PROPOSALS AND ADOPTIONS**

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the May 5, 1986 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(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.1986 d.100 means the one hundredth rule adopted in 1986.

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 certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: APRIL 21, 1986.

NEXT UPDATE WILL BE DATED MAY 19, 1986.

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
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
17 N.J.R. 1819 and 1954	August 5, 1985	18 N.J.R. 377 and 446	February 18, 1986
17 N.J.R. 1955 and 2070	August 19, 1985	18 N.J.R. 447 and 506	March 3, 1986
17 N.J.R. 2071 and 2170	September 3, 1985	18 N.J.R. 507 and 582	March 17, 1986
17 N.J.R. 2171 and 2318	September 16, 1985	18 N.J.R. 583 and 726	April 7, 1986
17 N.J.R. 2319 and 2484	October 7, 1985	18 N.J.R. 727 and 868	April 21, 1986
17 N.J.R. 2485 and 2584	October 21, 1985	18 N.J.R. 869 and 1018	May 5, 1986
17 N.J.R. 2585 and 2710	November 4, 1985	18 N.J.R. 1019 and 1122	May 19, 1986
17 N.J.R. 2711 and 2814	November 18, 1985	18 N.J.R. 1123 and 1222	June 2, 1986
17 N.J.R. 2815 and 2934	December 2, 1985	18 N.J.R. 1223 and 1326	June 16, 1986

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1, 1:2-1:21	Pre-proposal: Administrative hearings	18 N.J.R. 728(a)		
1:1-3.8	Attorney disqualification from a case	18 N.J.R. 2(a)		
1:1-15.10	Prior transcribed testimony	18 N.J.R. 1020(a)		
1:2-2.1	Civil Service cases: pre-proposal concerning conference hearings	17 N.J.R. 2072(a)		
1:6	Education budget hearings	18 N.J.R. 1020(b)		
1:6A-5.4	Special education hearings: stay of decision implementation	18 N.J.R. 584(a)	R.1986 d.195	18 N.J.R. 1192(a)
1:30	Agency rulemaking: correction	18 N.J.R. 3(a)	R.1986 d.60	18 N.J.R. 938(a)
(TRANSMITTAL 20, dated April 21, 1986)				
AGRICULTURE—TITLE 2				
2:5-3	Avian influenza	18 N.J.R. 488(a)	R.1986 d.148	18 N.J.R. 938(b)
2:9-1.1, 1.2	Avian influenza and infected poultry flocks	18 N.J.R. 870(a)		
2:22-3.1	Africanized honeybee control	18 N.J.R. 585(a)	R.1986 d.200	18 N.J.R. 1192(b)
2:24-1	Shipment of bees into State	18 N.J.R. 586(a)	R.1986 d.199	18 N.J.R. 1192(c)
2:69-1.11	Commercial values of fertilizers	18 N.J.R. 588(a)	R.1986 d.198	18 N.J.R. 1193(a)
2:71-2.2-2.7	"Jersey Fresh" Quality Grading Program	18 N.J.R. 588(b)	R.1986 d.201	18 N.J.R. 1196(a)
2:71-2.28, 2.29, 2.31	Fees for inspection and grading of fruit and vegetables	18 N.J.R. 448(a)	R.1986 d.147	18 N.J.R. 938(c)
2:76-3.12	Farmland preservation programs: deed restrictions	18 N.J.R. 508(a)	R.1986 d.196	18 N.J.R. 1192(b)
2:76-4.11	Municipally-approved preservation programs: deed restrictions	18 N.J.R. 511(a)	R.1986 d.197	18 N.J.R. 1195(a)
2:76-6.15	Acquisition of development easements: deed restrictions	18 N.J.R. 513(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)		
2:90-3.6, 3.9	Time extensions to complete conservation projects	18 N.J.R. 449(a)	R.1986 d.190	18 N.J.R. 1099(a)
(TRANSMITTAL 39, dated April 21, 1986)				
BANKING—TITLE 3				
3:1-2.24	Modification of Commissioner's Order restricting stock transfers	17 N.J.R. 2487(a)		
3:11-11	Leeway investments	18 N.J.R. 132(a)		
3:17	Small loan rules	18 N.J.R. 1021(a)		
3:38-5.2	Return of borrower's commitment fee	17 N.J.R. 2488(b)		
(TRANSMITTAL 33, dated April 21, 1986)				
CIVIL SERVICE—TITLE 4				
4:1-2.1, 5.2, 11.2, 16, 24	Separations, demotions, layoffs; review and appeals	18 N.J.R. 450(a)		
4:1-16, 24	Separations, layoffs, demotions	18 N.J.R. 450(a)	R.1986 d.206	18 N.J.R. 1260(a)
4:1-8.4	Promotional examinations	18 N.J.R. 591(a)		
4:1-15	Assignments and transfers	18 N.J.R. 592(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
4:2-15.1	Assignments and transfers	18 N.J.R. 592(a)		
4:2-16	Separations and demotions	18 N.J.R. 450(a)		
4:2-16	Separations, layoffs, demotions	18 N.J.R. 450(a)	R.1986 d.206	18 N.J.R. 1260(a)
4:3-16	Separations and demotions	18 N.J.R. 450(a)		
4:3-16	Separations, layoffs, demotions	18 N.J.R. 450(a)	R.1986 d.206	18 N.J.R. 1260(a)
4:6	Overtime compensation	18 N.J.R. 515(a)	R.1986 d.170	18 N.J.R. 939(a)

(TRANSMITTAL 29, dated April 21, 1986)

COMMUNITY AFFAIRS—TITLE 5

5:11-2.1	Uniform Fire Code enforcement and relocation assistance	17 N.J.R. 2938(a)		
5:12-2.4, 2.5	Homelessness Prevention Program: eligibility and priorities	17 N.J.R. 2939(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)	R.1986 d.214	18 N.J.R. 1260(b)
5:23-2.14, 4.18, 4.20	UCC: annual construction permits	17 N.J.R. 2490(a)	R.1986 d.213	18 N.J.R. 1266(a)
5:23-3.2	Subcode exceptions	18 N.J.R. 757(a)		
5:23-3.11, 4.22, 4.24, 4.25	Uniform Construction Code: premanufactured construction	17 N.J.R. 1169(a)	R.1986 d.142	18 N.J.R. 945(a)
5:23-5.5, 5.7	Construction subcode licensure: transferability of experience	18 N.J.R. 594(a)		
5:23-5.26	Uniform Construction Code: revocation of licenses	18 N.J.R. 16(b)	R.1986 d.173	18 N.J.R. 1099(b)
5:23-7	Barrier Free Subcode: access for physically handicapped and aged	18 N.J.R. 757(a)		
5:23-8	Asbestos hazard abatement subcode	18 N.J.R. 378(a)	R.1986 d.143	18 N.J.R. 949(a)
5:25	New Home Warranties and Builders' Registration	17 N.J.R. 2816(a)	R.1986 d.141	18 N.J.R. 959(a)
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 218(a)		
5:25	New Home Warranty and Builders' Registration rules: waiver of sunset provision	18 N.J.R. 490(a)		
5:29	Housing and Development: petitions for rules	18 N.J.R. 871(a)		
5:30-17	Local public contracts: cooperative pricing and joint purchasing systems	18 N.J.R. 1022(a)		
5:80-4	Housing and Mortgage Finance	17 N.J.R. 1174(b)	Expired	
5:80-8	Housing and Mortgage Finance Agency: housing project occupancy requirements	17 N.J.R. 1620(a)		
5:80-20	HMFA housing projects: applicant and tenant income certification	17 N.J.R. 2321(b)		
5:80-20	HMFA housing projects: applicant and tenant income certification	18 N.J.R. 523(a)		
5:91	Council on Affordable Housing: procedural rules	18 N.J.R. 821(a)	R.1986 d.221	18 N.J.R. 1267(a)
5:92	Council on Affordable Housing: substantive rules	18 N.J.R. 1124(b)		

(TRANSMITTAL 40, dated April 21, 1986)

DEFENSE—TITLE 5A

(TRANSMITTAL 1, dated May 20, 1985)

EDUCATION—TITLE 6

6:11-2.1	Duties of State Board of Examiners	18 N.J.R. 595(a)		
6:12	Governor's Teaching Scholars Program	18 N.J.R. 135(a)	R.1986 d.158	18 N.J.R. 973(a)
6:20-5.5	State aid for asbestos removal and encapsulation	18 N.J.R. 392(b)	R.1986 d.204	18 N.J.R. 1198(a)
6:20-5.6	Minimum salaries and State aid	18 N.J.R. 393(a)	R.1986 d.205	18 N.J.R. 1199(a)
6:21-16.1	Pupil transportation contracts	18 N.J.R. 138(a)	R.1986 d.156	18 N.J.R. 975(a)
6:22-1.6, 1.7, 2.4, 3.1	School facility planning; substandard facilities	18 N.J.R. 526(a)		
6:24	Controversies and disputes under school law	18 N.J.R. 404(b)	R.1986 d.157	18 N.J.R. 976(a)
6:30	Adult and community education	18 N.J.R. 871(b)		
6:68-5	Audio-visual public library services	18 N.J.R. 595(b)		
6:68-6	Institutional library services	18 N.J.R. 597(a)		
6:69-2	Library services to the disadvantaged	18 N.J.R. 599(a)		

(TRANSMITTAL 39, dated April 21, 1986)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1-3.20	ECRA review process: exempt industrial categories	18 N.J.R. 529(a)	R.1986 d.188	18 N.J.R. 1099(c)
7:1-6	Disposal of solid waste	18 N.J.R. 883(a)		
7:1-7	Hazardous substance discharges: reports and notices	17 N.J.R. 1826(a)	R.1986 d.229	18 N.J.R. 1272(a)
7:1E-2.3	Discharge of hazardous substances: department response	18 N.J.R. 456(a)	R.1986 d.161	18 N.J.R. 980(a)
7:2-11.22	Bear Swamp East natural area	18 N.J.R. 139(a)	R.1986 d.202	18 N.J.R. 1200(a)
7:2-11.22	Bear Swamp East natural area: public hearing	18 N.J.R. 532(a)		
7:6-1.4, 1.12, 1.14, 1.15, 1.42	Boating rules	18 N.J.R. 876(a)		
7:7-2.2	Wetlands maps in Ocean County	17 N.J.R. 1710(a)		
7:7-2.2	Wetlands management in Atlantic County	18 N.J.R. 1026(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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)		
7:11-2.2, 2.3, 2.9	Sale of water from Delaware and Raritan Canal and Spruce Run/Round Valley Reservoirs	18 N.J.R. 17(a)	R.1986 d.187	18 N.J.R. 1100(a)
7:12-1.2-1.6, 1.8, 2.1, 2.15	Shellfish-growing water classification	18 N.J.R. 784(a)	R.1986 d.234	18 N.J.R. 1275(a)
7:13-7.1(c)29	Floodway delineations within Maurice River Basin	17 N.J.R. 2186(a)		
7:13-7.1(d)	Flood hazard delineations for Raritan River and Peters Brook	18 N.J.R. 600(a)		
7:14A-4.4, 4.7	Dioxin-containing waste	18 N.J.R. 879(a)		
7:14A-6.16	Disposal of solid waste	18 N.J.R. 883(a)		
7:19-3	Water allocation permit fees	18 N.J.R. 789(a)		
7:22	Wastewater treatment facilities: construction grants and loans	18 N.J.R. 243(a)		
7:24	Dam restoration grants	18 N.J.R. 395(a)	R.1986 d.186	18 N.J.R. 1101(a)
7:25-4.17	Status of indigenous nongame wildlife	18 N.J.R. 601(a)	R.1986 d.230	18 N.J.R. 1279(a)
7:25-5	1986-1987 Game Code	18 N.J.R. 1026(b)		
7:25-8.1	Repeal clam dredging rule	18 N.J.R. 396(a)	R.1986 d.232	18 N.J.R. 1279(b)
7:25-9	Minimum legal size for hard clams	18 N.J.R. 146(a)	R.1986 d.231	18 N.J.R. 1280(a)
7:25-10	Possession of captive game animals and birds	18 N.J.R. 533(a)	R.1986 d.233	18 N.J.R. 1280(b)
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)	R.1986 d.160	18 N.J.R. 981(a)
7:26-1.4, 2, 2A, 2B, 5, 12.11, 12.12	Disposal of solid waste	18 N.J.R. 883(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, 7.5, 7.7, 8.13	Waste oil	18 N.J.R. 878(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)	R.1986 d.162	18 N.J.R. 982(a)
7:26-2.6, 2.7	Disposal of asbestos waste	17 N.J.R. 2719(a)		
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 252(a)		
7:26-2.9	Closure and post-closure of sanitary landfills	18 N.J.R. 924(a)		
7:26-2.9	Closure and post-closure care of sanitary landfills: escrow agreements	18 N.J.R. 1036(a)		
7:26-2.13	Resource recovery facilities and transfer stations: recordkeeping	—————	—————	18 N.J.R. 983(a)
7:26-6.5	Solid waste flow: Ocean County	17 N.J.R. 2590(a)	R.1986 d.159	18 N.J.R. 983(b)
7:26-6.5	Solid waste flow: Camden County	17 N.J.R. 2591(a)	R.1986 d.164	18 N.J.R. 983(c)
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management	17 N.J.R. 2941(a)		
7:26-8.1, 8.2, 8.19, 9.3, 9.7, 12.2	Hazardous waste management: extension of comment period	18 N.J.R. 254(a)		
7:26-8.3, 8.4, 8.13, 8.15, 10.5-10.8, 11.1, 11.5, 11.6, 12.2	Dioxin-containing waste	18 N.J.R. 879(a)		
7:26-8.14, 8.15, 8.16	Hazardous waste criteria, identification and listing	18 N.J.R. 1037(a)		
7:26-8.16	Waste code numbers for hazardous constituents	18 N.J.R. 792(a)		
7:26-17	Scales at solid waste facilities	18 N.J.R. 1154(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)		
7:28-14	Therapeutic radiation installations	18 N.J.R. 1157(a)		
7:28-42.1	Workplace exposure to radio frequency radiation	18 N.J.R. 1166(a)		
7:45	Delaware and Raritan Canal State Park: Review Zone rules	17 N.J.R. 1711(a)		
7:45-1, 2, 3	Delineation of Review Zone within Delaware and Raritan Canal State Park: reopening of comment period	18 N.J.R. 457(a)		

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HEALTH—TITLE 8

8:9-1.11	Disposal of cremains: public hearing	17 N.J.R. 2835(a)		
8:22-1	Campgrounds sanitation	18 N.J.R. 1038(a)		
8:26	Recreational bathing	18 N.J.R. 1040(a)		
8:31-25.1	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:31-30.1	Health facilities construction: plan review fees	18 N.J.R. 795(a)		
8:31B-3.19	RIM methodology for nursing cost allocation: implementation date	17 N.J.R. 2464(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
8:31B-3.31	Hospital reimbursement: transfer of residency positions	18 N.J.R. 795(b)		
8:31B-3.76-3.82	Hospital reimbursement: URO performance evaluation; post-billing denial of payments	18 N.J.R. 150(b)		
8:33B-1.3, 1.12	Extracorporeal shock wave lithotripsy services	18 N.J.R. 798(a)		
8:34-1.31	Licensing of nursing home administrators	17 N.J.R. 2212(a)		
8:41-8	Mobile intensive care: administration of medications	18 N.J.R. 602(a)		
8:42A	Alcoholism treatment facilities	18 N.J.R. 796(a)		
8:43B-8.16	Obstetric and newborn services: use of oxytocic agents	17 N.J.R. 2213(a)	R.1986 d.167	18 N.J.R. 984(a)
8:43E-1	Hospital Policy Manual: Certificate of Need rules	17 N.J.R. 1220(a)	Expired	
8:43E-1	Hospital Policy Manual	18 N.J.R. 825(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)	R.1986 d.227	18 N.J.R. 1283(a)
8:60-1.1, 4.2-4.8, 5.2, 5.4-5.7, 6.1, 6.3, 6.11	Asbestos licenses and permits	18 N.J.R. 156(a)		
8:65-10.1	Controlled dangerous substances: analogs of fentanyl	18 N.J.R. 254(b)	R.1986 d.184	18 N.J.R. 1102(a)
8:65-10.1	Controlled dangerous substances: Parafluorofentanyl	18 N.J.R. 603(a)		
8:65-10.2	Removal of Nalmefene from Schedule II of controlled substances	18 N.J.R. 536(a)		
8:65-10.4	Controlled substances: Quazepam and Midazolam	18 N.J.R. 1166(b)		
8:65-11	Narcotic treatment programs	18 N.J.R. 924(b)		
8:71	Generic drug list additions (see 17 N.J.R. 2042(b), 2556(b), 2769(a), 18 N.J.R. 182(a), 845(a))	17 N.J.R. 1043(a)		
8:71	Generic drug list additions (see 17 N.J.R. 2557(a), 2769(b), 18 N.J.R. 183(a), 418(a))	17 N.J.R. 1733(a)	R.1986 d.151	18 N.J.R. 985(a)
8:71	Generic drug list additions (see 18 N.J.R. 417(a), 984(b))	17 N.J.R. 2842(a)	R.1986 d.183	18 N.J.R. 1102(b)
8:71	Generic drug list additions: public hearing	18 N.J.R. 537(a)		
8:71	Generic drug list additions	18 N.J.R. 1167(a)		

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HIGHER EDUCATION—TITLE 9

9:2-5	Management of computerized information	18 N.J.R. 799(a)		
9:7-2.2	Residency and student assistance	18 N.J.R. 801(a)		
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)		
9:11-1.2	Educational Opportunity Fund: student residency	18 N.J.R. 925(a)		
9:11-1.5	EOF: undergraduate grants	18 N.J.R. 926(a)		
9:11-1.7	EOF: grant amounts	18 N.J.R. 926(b)		
9:12-1.5, 2.3	Educational Opportunity Fund Program	17 N.J.R. 2214(b)		
9:12-1.5, 2.3	Educational Opportunity Fund Program	18 N.J.R. 801(b)		

(TRANSMITTAL 31, dated April 21, 1986)

HUMAN SERVICES—TITLE 10

10:36-1	Patient supervision at State psychiatric hospitals	17 N.J.R. 2593(a)		
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)		
10:38	Interim assistance procedures for discharged clients of State hospitals	18 N.J.R. 802(a)		
10:42	Developmental Disabilities: Emergency Mechanical Restraint	17 N.J.R. 1832(a)		
10:49-1.1, 1.2, 1.4	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:49-1.27	Correction to Administrative Code			18 N.J.R. 1205(c)
10:50-1.5, 2.3	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:51-1.2, 1.14, 3.1	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:51-1.14, 5.16	Pharmaceutical services: ineligible prescription drugs	17 N.J.R. 2730(a)		
10:52-1.2, 1.3, 1.6, 1.8, 1.19	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:52-1.5, 1.17	Out-of-state inpatient hospital services	18 N.J.R. 538(a)		
10:52-1.16	Termination of pregnancy in licensed health care facilities	17 N.J.R. 1375(a)		
10:53-1.2, 1.3, 1.5, 1.7, 1.15	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:53-1.14	Termination of pregnancy	17 N.J.R. 1375(a)		
10:54-1.2, 1.4, 1.7, 1.9, 1.10	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:54-1.23	Termination of pregnancy	17 N.J.R. 1375(a)		
10:54-4	Physician's Services: common procedure coding (HCPCS)	18 N.J.R. 927(a)		
10:55-2.2	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:56-1.12, 2.1	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
10:57-1.3, 1.7, 1.13, 2.3	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:59-2.3	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:61-1, 2	Independent laboratory services	18 N.J.R. 540(a)		
10:61-2.1, 2.5	Independent laboratory services	18 N.J.R. 540(a)	R.1986 d.219	18 N.J.R. 1293(a)
10:61-2.2	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:62-1.4, 3.3	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:63-1.16, 2.1	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:63-1.22	Correction to Administrative Code			18 N.J.R. 1205(c)
10:63-3.2, 3.4, 3.5, 3.6, 3.8, 3.10-3.15, 3.18, 3.19	Long-term care facilities: CARE Guidelines	18 N.J.R. 257(a)		
10:65-1.2, 2.5	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:66-1.6	Termination of pregnancy	17 N.J.R. 1375(a)		
10:66-1.6	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:66-2, 3	Independent clinic services	18 N.J.R. 541(a)		
10:66-2.2, 2.3	Independent clinic services	18 N.J.R. 541(a)	R.1986 d.220	18 N.J.R. 1294(a)
10:66-3	Independent Clinic Services: common procedure coding (HCPCS)	18 N.J.R. 927(a)		
10:66-3	Independent clinic transportation services: HCPCS codes	18 N.J.R. 1053(a)		
10:67-2.3	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:68	Chiropractic services and billing procedures	18 N.J.R. 1053(b)		
10:68-1.2	Medically Needy program	18 N.J.R. 803(a)	R.1986 d.236	18 N.J.R. 1287(a)
10:68-2	Chiropractor billing procedures	18 N.J.R. 810(a)		
10:69A-5.3	Renewal applications for PAAD beneficiaries	18 N.J.R. 1054(a)		
10:70	Medically Needy supplement	18 N.J.R. 831(a)	R.1986 d.237	18 N.J.R. 1287(a)
10:81-3.38	PAM: transfer of resources	18 N.J.R. 1168(a)		
10:81-3.40, 3.41	PAM: repayment agreements and child injury awards	18 N.J.R. 1055(a)		
10:81-6.3	PAM: transportation of client to fair hearing	18 N.J.R. 927(b)		
10:81-7.21—7.29	PAM: funeral and burial payments	18 N.J.R. 1168(b)		
10:81-10.7	PAM: eligibility for refugee and entrant programs	17 N.J.R. 2227(a)		
10:81-11.3, 11.9	PAM: Social Security numbers; restriction of information	17 N.J.R. 2516(b)		
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11:2-20	License renewal: continuing education requirement	17 N.J.R. 2962(a)		
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11:5-1.3	Licensing of real estate broker and broker-salesperson	18 N.J.R. 1088(a)		
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12:195-1.3, 1.4, 1.7, 1.9, 1.12, 1.13, 1.14, 2.1, 3.1, 3.3, 3.9, 3.10, 3.14, 4.2, 4.6, 5.11, 6	Carnival-amusement rides	18 N.J.R. 609(a)	R.1986 d.222	18 N.J.R. 1303(a)
12:235	Practice and procedure before Division of Workers' Compensation	17 N.J.R. 2081(a)	R.1986 d.144	18 N.J.R. 987(a)
12:235-7.2	Correction	17 N.J.R. 2081(a)	R.1986 d.144	18 N.J.R. 1201(a)

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13:29-1.14	Board of Accounting licenses: notification requirement concerning convictions	18 N.J.R. 264(a)	R.1986 d.172	18 N.J.R. 1104(b)
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(TRANSMITTAL 22, dated April 21, 1986)



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