

# NEW JERSEY REGISTER



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*THE JOURNAL OF STATE AGENCY RULEMAKING*

**VOLUME 22      NUMBER 8**  
**April 16, 1990      Indexed 22 N.J.R. 1183-1290**  
 (Includes adopted rules filed through March 23, 1990)

**MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: FEBRUARY 20, 1990**  
 See the Register Index for Subsequent Rulemaking Activity.  
**NEXT UPDATE: SUPPLEMENT MARCH 19, 1990**

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

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

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## NEW JERSEY REGISTER

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# RULE PROPOSALS

## BANKING

### (a)

#### CEMETERY BOARD

##### Temporary Storage

##### Proposed New Rule: N.J.A.C. 3:41-7.4

Authorized By: William L. Ingling, Executive Director, New Jersey Cemetery Board.

Authority: N.J.S.A. 8A:2-2.

Proposal Number: PRN 1990-137.

Submit comments by May 16, 1990 to:

William L. Ingling  
Executive Director  
New Jersey Cemetery Board  
CN 040  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

The proposed new rule permits a cemetery company to temporarily store human remains in a properly constructed receiving vault prior to final entombment or interment for not more than four years. These remains may be transferred to the place of final entombment or interment without a disinterment permit or the presence of a funeral director if both places are within a single cemetery. This temporary storage is permitted only if the words "temporary storage" are placed on the death certificate, and if the burial permit references the temporary storage. The receptacle placed in temporary storage must be marked with the decedent's full name, date of death and the cause of death stated on the death certificate, along with the full name, mailing address and telephone number of both the responsible next of kin as defined under N.J.S.A. 8A:5-18, and the licensed funeral director or funeral establishment whose name appears on the death certificate and burial permit.

Before transfer from the place of temporary storage to the place of final entombment or interment, the cemetery company must notify the licensed funeral director or funeral establishment that originally supervised the delivery to temporary storage or another funeral establishment of the next of kin's choice, along with the responsible next of kin. This notice must be given at least seven days before the transfer. This section on temporary storage does not apply to the storage or transfer of the body of a person who died of a communicable disease.

#### Social Impact

The proposed rule will have the beneficial social impact of facilitating temporary storage and transfer prior to final entombment or interment.

#### Economic Impact

Consumers who choose not to have a funeral director present when human remains are transferred from temporary storage to final entombment or interment within a single cemetery will save the costs associated herewith. Funeral directors may find their income, from services rendered during the transfer of human remains from temporary storage to final entombment or interment, to be diminished. Cemetery companies will not be economically affected more than a small administrative cost incurred in the notification process. The agency may incur investigative costs in administering the new rule as complaints are handled as any other consumer complaint.

#### Regulatory Flexibility Analysis

Most, if not all, of the cemetery companies as well as the funeral establishments affected by this proposed rule are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the only compliance requirement concerns notice to the next of kin and a funeral establishment prior to transfer. Since it is critical that these parties be advised of the transfer, no differentiation based on the business size is proposed for this provision.

Full text of the proposed new rule follows:

3:41-7.4 Temporary storage prior to final entombment or interment within a single cemetery

(a) A cemetery company may temporarily store human remains in a properly constructed receiving vault prior to final entombment or interment for not more than four years. The cemetery company may transfer the remains from the place of temporary storage to the place of final entombment or interment without obtaining a disinterment permit and without the presence of a licensed funeral director if both places are within a single cemetery.

(b) A cemetery company may conduct temporary storage and transfer under this section only if the words "temporary storage" along with the location of the temporary storage within the cemetery appear on the death certificate and burial permit.

(c) The receptacle to be placed in temporary storage which contains the human remains shall be clearly, legibly and durably marked by the licensed funeral director whose name appears on the death certificate and burial permit, with the decedent's full name, date of death and the cause of death as stated on the death certificate and burial permit; and with the full name, mailing address and telephone number of both the responsible next of kin as defined under N.J.S.A. 8A:5-18, and the designated licensed funeral director or funeral establishment whose name appears on the death certificate and burial permit.

(d) Prior to transfer from the place of temporary storage to the place of final entombment or interment pursuant to this section, the cemetery company shall notify in writing the licensed funeral director or funeral establishment that originally supervised the delivery to temporary storage or another licensed funeral director or funeral establishment of the next of kin's choice, and the responsible next of kin as defined by N.J.S.A. 8A:5-18, at least seven days before the transfer from the temporary storage.

(e) A cemetery company may not pursuant to this section temporarily store or transfer the body of a person who died of a communicable disease as defined in N.J.S.A. 26:6-38.

(f) For purposes of this section "properly constructed receiving vault" means a container, made of concrete, slate, brick, steel, or other similar durable material, used or intended to be used for the temporary placement of a casket in which human remains have been placed and may be a space in a mausoleum used or intended to be used to entomb human remains.

## MILITARY AND VETERANS' AFFAIRS

### (b)

#### THE ADJUTANT GENERAL

##### Leaves of Absence for Military Duty for and by Members of the National Guard

##### Proposed Readoption with Amendments: N.J.A.C. 5A:2

Authorized By: Major General Vito Morgano, Adjutant General, Department of Military and Veterans' Affairs.

Authority: N.J.S.A. 38A:3-6(a) and (o); 38A:4-4 (a) and (b).

Proposal Number: PRN 1990-186.

Submit written comments by May 16, 1990 to:

LTC William C. Lowe  
Director of Administration  
New Jersey Department of Military and Veterans' Affairs  
CN 340  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 5A:2 expires May 20, 1990. The Department of Military and Veterans' Affairs has reviewed these rules and has determined them to be necessary, reasonable, and

proper for the purposes for which they were originally promulgated. Amendments indicated are a result of changes made in the Department as a result of P.L. 1987, c.444.

These rules provide implementing instructions for the operation of a system to allow National Guard units to request military leave for public employees who are members of the unit. The system allows for the employee's appointing authority to comment on the request prior to its approval. In addition, the rules provide for the final decision to be made by the Adjutant General, Department of Military and Veterans' Affairs as to the granting of leave.

The system established by the rules is fair and equitable, balancing the needs of the public employer against the unit's need with regard to its mission requirements.

The rules define the types of duty which are considered mandatory and for which military leave with pay will be granted. They also indicate the types of military training duty for which "other than military leave with pay" may be granted.

#### Social Impact

The readoption of the rules governing military leave (N.J.A.C. 5A:2) provide for a clarification of various statutes and allow for the orderly resolution of disputes between the National Guard and public employers in New Jersey.

When the Legislature of the State adopted N.J.S.A. 38A, the provision for the granting of 90 days of paid military leave a year to public employees was included in recognition of the fact that the National Guard is a State force and that it is in the best interest of the State to support the membership thereof. The members of the National Guard are required to make numerous sacrifices in service to the State and the nation; the granting of military leave in addition to other leave programs is one means of recognizing these sacrifices.

By the same token, it was not the intent of the Legislature to grant an additional 90 days of paid leave to every public employee each year. The system as established by these rules is meant to ensure only mandatory and legitimate military duty is covered by the military leave laws.

#### Economic Impact

The rules represent an economic impact in that salaries and benefits will be paid to public employees who are on military leave. However, the impact of this program is mitigated by the fact that the National Guard makes significant contributions to the economy of the State through military pay and entitlements to the individual soldier and through the various operational programs of the National Guard.

The costs to the State generated by the military leave program are far less than the costs which would be entailed if the State had to establish, equip, and maintain some force or organization which could be available to the Governor and the State in a manner similar to the present National Guard.

#### Regulatory Flexibility Statement

The rules do not impose any requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules apply to public employees who are members of the New Jersey National Guard only, and public employers.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5A:2.

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

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 5A:2-1.1 Scope

[(a)] This chapter is applicable to members of the **New Jersey National Guard** only.

#### 5A:2-1.2 Purpose

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

(c) The President of the United States, through the respective military service secretaries, and the Governor, through [The] the Adjutant General, New Jersey Department of [Defense (NJDDOD)] **Military and Veterans' Affairs** (NJDMAVA), as defined in N.J.S.A. 38A, are the proponents for the issuance of military orders for the New Jersey National Guard (NJNG) and its members, who enlist,

are mobilized, attend military schools, conferences, training exercises, or perform any other duty ordered by the President or the Governor.

(d) The New Jersey Department of [Defense] **Military and Veterans' Affairs**, must, by law, adhere and conform to State and Federal law and the regulations, forms, precedence, and usages of the United States Department of Defense, the Departments of the Army or the Air Force, and the National Guard Bureau concerning training requirements and other military duty.

#### 5A:2-1.3 Public and private employers

[(a)] Every public and private employer is obligated to release a member of the New Jersey National Guard who has been ordered to military duty, through either the New Jersey Department of [Defense] **Military and Veterans' Affairs** or the service secretaries of the United States Department of Defense. Military duty may be voluntary or involuntary and includes Initial Active Duty Training, Active Duty in State service, Active Duty in Federal service, Inactive Duty Training, and all forms of Active Duty for Training. Employers must grant excused absences from work for military duty without regard to shift or weekend work policies. The rescheduling of work to make up work lost is at the discretion of the employer. Failure to release an employee who has been so ordered may subject the employer to criminal prosecution or other penalties.

### SUBCHAPTER 2. NEW JERSEY PUBLIC OFFICIALS AND EMPLOYEES

#### 5A:2-2.1 General policy

(a) The New Jersey Department of [Defense] **Military and Veterans' Affairs** recognizes that the calling of members of the National Guard to military service should not arbitrarily interfere with the operation of other New Jersey State, county or municipal agencies, be detrimental to the public interest, or permit salary payment to New Jersey public officials or employees for leaves of absence for military duty which are not authorized by State or Federal law.

(b) It is therefore the policy of the New Jersey Department of [Defense] **Military and Veterans' Affairs** that New Jersey public officials and employees, who are members of the New Jersey National Guard, must obtain the written endorsement of their agency's appointing authority, as defined in N.J.A.C. [4:1-2.1] **4A:1-1.3**, for a leave of absence for military duty prior to the issuance of military orders by the New Jersey Department of [Defense] **Military and Veterans' Affairs**. The requirement to obtain a written endorsement does not apply to Initial Active Duty for Training (IADT), Inactive Duty Training (IDT), Federal Mobilization, Active Duty (AD), or other duty ordered by the Governor.

#### 5A:2-2.2 Procedures for requesting orders

(a) (No change.)

(b) Unit commanders must obtain from the New Jersey public official or [employees] **employee's** appointing authority, a completed Notice of Leave of Absence for Military Duty, [NJDDOD] NJDMAVA Form 33, (see Appendix A) prior to the issuance of orders and the commencement of military duty to be performed by the New Jersey public official or employee. [NJDDOD] NJDMAVA Form 33 is not required for duty exempted in N.J.A.C. 5A:2-2.1(b).

(c) If the public official or employee's appointing authority declines to indorse a leave of absence for military duty, the employer must provide supporting reasons and return the [NJDDOD] NJDMAVA Form 33 to the unit commander not later than the date specified on the form. Failure of the appointing authority to return the [NJDDOD] NJDMAVA Form 33 will not prevent the issuance of military orders. The unit commander will forward the completed [NJDDOD] NJDMAVA Form 33, or the file copy indicating the failure of the appointing authority to return the original form, through military channels for review by [The] the Adjutant General, New Jersey Department of [Defense] **Military and Veterans' Affairs**. All requests will be reviewed on a case-by-case basis to determine the impact upon the mission readiness and capability of the unit concerned.

(d) Orders for military duty to be performed by a New Jersey public official or employee will not be issued pursuant to [N.J.A.C.

PROPOSALS

Interested Persons see Inside Front Cover MILITARY AND VETERANS' AFFAIRS

5A:2-2.2(a) above by any headquarters without the prior written approval of [The] the Adjutant General contained on the [NJ DOD] NJDMAVA Form 33.

(e) To insure that appointing authorities have verification that the military duty to be performed by a public official or employee meets the mandatory criteria for military leave with pay, orders and [NJ DOD] NJDMAVA Form 33 will contain statements identifying the military duty in accordance with N.J.A.C. 5A:2-2.3(b).

(f) The Adjutant General, New Jersey Department of [Defense] Military and Veterans' Affairs may, in his discretion, make a final determination to approve, modify, or disapprove any duty specified in the [NJ DOD] NJDMAVA Form 33 and will notify the appointing authority directly by providing a completed copy of that form.

5A:2-2.3 Military leave

(a) Military leave is authorized in accordance with N.J.S.A. 38A:4-4 and N.J.A.C. [4:1-17.7] 4A:6-1.11, for all public officials and employees including those of the State of New Jersey, and of any county, school district, municipality, board, commission or authority, who are members of the New Jersey National Guard.

(b) Pursuant to N.J.S.A. 38A:4-4 and N.J.A.C. [4:1-17.7(e)] 4A:6-1.10(b), the following Active Duty and Active Duty for Training in State service are mandatory and require that leaves of absence be granted to New Jersey public officials and employees without loss of pay or time, not to exceed 90 days in the aggregate in any one year, and shall be in addition to the regular vacation allowed such officials and employees.

1.-2. (No change.)

(c) Pursuant to N.J.S.A. 38A:4-4 and N.J.A.C. [4:1-17.7(b)] 4A:6-1.10(b), all other duty ordered by the Governor is mandatory and requires that leaves of absence be granted to New Jersey public officials and employees without loss of pay or time and shall be in addition to regular vacation allowed such officials and employees.

(d) (No change.)

5A:2-2.4 Military orders for New Jersey public officials and employees

(a) The New Jersey Department of [Defense] Military and Veterans' Affairs and Army and Air National Guard Administrative Headquarters will issue military orders to authorize the following duty by New Jersey [Public Officials and Employees] public officials and employees:

1.-5. (No change.)

(b) (No change.)

(c) Subordinate headquarters of the New Jersey Department of [Defense] Military and Veterans' Affairs are also authorized to issue unit orders, in either order or training schedule format, which require attendance at Inactive Duty Training (IDT) for specified periods of Unit Training Assemblies (UTA).

APPENDIX A: Notice of Leave of Absence for Military Duty (New Jersey Department of [Defense] Military and Veterans' Affairs Form 33)

\_\_\_\_\_
Date

SUBJECT: Notice of Leave of Absence for Military Duty
Appointing Authority (as defined in N.J.A.C. [4:1-2.1] 4A:1-1.3)

1. The individual listed below, an employee of your agency, is required to perform military duty for time and purpose indicated below in connection with his or her assignment as a member of the New Jersey Army/Air National Guard.

Name and Rank \_\_\_\_\_

Period of Duty \_\_\_\_\_

Possible Alternate Periods of Duty \_\_\_\_\_

Location \_\_\_\_\_

Purpose \_\_\_\_\_

Authority \_\_\_\_\_

(Cite a specific portion of [or para 3c of] N.J.A.C. [\_\_\_\_\_] 5A:2-2.3(b)2)

2. The New Jersey Department of [Defense] Military and Veterans' Affairs recognizes that the calling of members of the National Guard to military service should not arbitrarily interfere with the operation of other New Jersey State, county or municipal agencies, be detrimental to the public interest, or permit salary payment to New Jersey public officials or employees for leaves of absence for military duty which are not authorized by State or Federal law. It is therefore the policy of the New Jersey Department of [Defense] Military and Veterans' Affairs that New Jersey public officials and employees, who are members of the New Jersey National Guard, must obtain the written indorsement of their agency's appointing authority, as defined in N.J.A.C. [4:1-2.1] 4A:1-1.3, for a leave of absence for military duty prior to the issuance of military orders by the New Jersey Department of [Defense] Military and Veterans' Affairs.

3. It is requested that you provide your indorsement and/or comments regarding this leave of absence in the space provided below and return this form directly to this headquarters in the envelope provided not later than \_\_\_\_\_. In some cases, it may be necessary to postpone this duty to another time period due to circumstances beyond our control. Should this occur, the New Jersey Department of [Defense] Military and Veterans' Affairs will notify you of the date change.

4. You will receive a completed copy of this form by return mail indicating the final action taken by [The] the Adjutant General regarding the issuance of the orders for military duty. Your cooperation in this matter is appreciated.

\_\_\_\_\_
Signature

\_\_\_\_\_
Title

\_\_\_\_\_
Unit

\_\_\_\_\_
Date

Indorsement and/or comment

\_\_\_\_\_
Signature

\_\_\_\_\_
Typed Name

\_\_\_\_\_
Title

TO: Appointing Authority  
 SUBJ: Final Action of [The] the Adjutant General, [NJOD] NJDMAVA

Issuance of orders is

\_\_\_\_\_ Approved If approval of the issuance of orders is contrary to the appointing authority's comments or indorsement, [The] the Adjutant General will notify the appointing authority of an opportunity to further discuss the matter.

\_\_\_\_\_ Approved for alternate dates as follows:

\_\_\_\_\_ Disapproved

By: \_\_\_\_\_  
 The Adjutant General  
 New Jersey Department of  
 [Defense]  
 Military and Veterans' Affairs

**ENVIRONMENTAL PROTECTION**

**(a)**

**DIVISION OF COASTAL RESOURCES**

**Coastal Zone Management**

**Proposed Readoption with Amendments: N.J.A.C. 7:7E**

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-1 et seq.; 13:19-1 et seq.; 13:9A-1 et seq.; 13:9B-1 et seq.; and 12:5-1 et seq.

DEP Docket Number: 009-90-03.

Proposal Number: PRN 1990-177.

Public hearings concerning the proposal will be held on:

- May 11, 1990 at 11:00 A.M.  
 Auditorium  
 Atlantic County Office Building  
 Atlantic City, New Jersey
- May 10, 1990 at 11:00 A.M.  
 Council Chambers  
 1 Municipal Plaza  
 Asbury Park, New Jersey
- May 15, 1990 at 10:00 A.M.  
 Conference Room A, Plaza 5  
 501 East State Street  
 Trenton, New Jersey

Submit written comments by June 1, 1990, to:  
 James M. Murphy, Esq.  
 Division of Regulatory Affairs  
 New Jersey Department of Environmental Protection  
 CN 402  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:7E will expire on July 24, 1990. The Department of Environmental Protection (Department or DEP) has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. However, certain amendments are proposed in order to update and further refine and clarify the rules. Therefore, N.J.A.C. 7:7E is proposed for readoption with certain amendments as described below.

The Rules on Coastal Resources and Development (Rules), herein proposed for redesignation as Coastal Zone Management (N.J.A.C. 7:7E), are the standards which the Division of Coastal Resources (Division) uses to make permit decisions under the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq.; the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.; the Freshwater Wetland Protection Act,

N.J.S.A. 13:9B-1 et seq.; and the Waterfront Development Act, N.J.S.A. 12:5-3. These rules govern all DEP planning and regulatory actions in the Coastal Zone. They are also an element of New Jersey's federally approved Coastal Management Program.

The Coastal Area Facility Review Act gives the Department authority to regulate major development in the Bay and Ocean Shore Segment of the Coastal Zone, to preserve environmentally sensitive sites and ensure a rational pattern of development. It also requires the Department to prepare a strategy for the Coastal Zone. This strategy is embodied in the Rules.

The Freshwater Wetland Protection Act gives the Department the authority to protect all of the State's inland waterways and freshwater wetlands by requiring persons who propose to engage in certain regulated activities to apply to the Department for a permit. The Department's rules implementing the Freshwater Wetlands Protection Act appear at N.J.A.C. 7:7A.

The Wetlands Act of 1970 delegated authority to the Department to delineate and regulate development in all coastal wetlands of the State from the Raritan River Basin southward and along southern portions of the Delaware River.

The Waterfront Development Act applies to all proposed development at or below the mean high water line on navigable waterways throughout the State. In certain areas of the State it includes development between the mean high water line and the first inland cultural feature or property line.

The Rules serve as the substantive basis for decisions of the Division on Waterfront Development Permits in the State's bay and ocean shore area and throughout the State. They also contain the standards that the Department will use to determine the consistency of actions proposed in the Coastal Zone by Federal, State, and local agencies and to determine consistency with the approved program of federal activities, development projects, licenses, permits, and financial assistance to the State and local governments under the Federal Coastal Zone Management Act. The Rules serve as the substantive standard for the Department when it is called upon to review federal domestic financial assistance applications as well as Environmental Impact Statements prepared under the National Environmental Policy Act (42 U.S.C. §4321 et seq.). From time to time, the Department receives requests for advice or comments on the adequacy or appropriateness of plans and proposals by government agencies and private interests. The Rules provide a basis for offering informed comments on the consistency of these plans and proposals.

Subchapter 1 sets forth the general purpose of the Rules, describes the decision making process used in the implementation of the standards and defines those terms which are used generally throughout the chapter.

Subchapter 2, entitled Location Policies, concerns the classification of all land and water locations into either a general area or, as required by specific conditions, one or more special areas. These special areas merit focused attention because they are naturally valuable, important for human use, hazardous, sensitive to impact, or in need of special planning requirements. They are defined and given special consideration in subchapter 3.

Subchapter 3, entitled Special Areas, divides special areas into Special Water Areas (N.J.A.C. 7:7E-3.2 through 7:7E-3.16), Special Water's Edge Areas (N.J.A.C. 7:7E-3.17 through 7:7E-3.31), Special Land Areas (N.J.A.C. 7:7E-3.32 through 7:7E-3.34), and coastwide special areas (N.J.A.C. 7:7E-3.35 through 7:7E-3.45). It also provides specific standards for activities within each special area. The general area is divided into two major groups, general water areas and general land areas.

Subchapter 4, entitled General Water Areas, defines the area types and establishes standards for activities within each type.

Subchapter 5, entitled General Land Areas, provides standards for development of land areas. Three factors, coastal growth rating, environmental sensitivity and development potential, determine the acceptable development intensity for each location within the land area.

Subchapter 6, entitled General Location Policies, provides additional standards for development within the Coastal Zone. A project which may comply with specific standards may still be rejected or conditionally approved as may be necessary to protect public health, safety and welfare, protect property and wildlife or preserve and enhance the natural environment. Secondary impacts, which are the effects of the additional development which is likely to be constructed ancillary to the regional project, must also comply with the standards established by this subchapter. Transportation and wastewater treatment systems are the principal types of development that require a secondary impact analysis, but major industrial, energy, commercial, residential, and other projects may also require a secondary impact analysis.

Subchapter 7, entitled Use Policies, describes the uses which are regulated in the Coastal Zone and sets forth standards governing each specific use.

Subchapter 8, entitled Resource Policies, concerns the third criterion by which the acceptability of a development project within the Coastal Zone is determined. It provides for a review of a proposed development in terms of its effects on various resources of the built and natural environment of the Coastal Zone, both at the proposed site as well as in its surrounding region.

These proposed amendments will update and further refine and clarify the Rules on Coastal Resources and Development by: (1) incorporating new data; (2) providing more comprehensive guidelines on resource management issues that require a sharper or more detailed focus; (3) correlating and consolidating recently adopted land use and resource protection regulations which affect the Coastal Management Program; and (4) modifying the format of Special Area provisions in subchapter 3 to assist the users in finding the applicable standards.

Due to the partial reorganization of subchapter 3, Special Areas, and the deletion of five Resource Policies under subchapter 8, a majority of the Special Areas and part of the Resource Policies are proposed for recodification. All citations listed below refer to existing citations in the New Jersey Administrative Code unless otherwise noted.

The major substantive changes proposed are within the following sections:

- Coastal High Hazard Areas (N.J.A.C. 7:7E-8.19)
- Erosion Hazard Areas (N.J.A.C. 7:7E-3.23)
- Farmland Conservation Areas (N.J.A.C. 7:7E-3.31)
- Coastal Growth Rating (N.J.A.C. 7:7E-5.3)
- Environmental Sensitivity Rating (N.J.A.C. 7:7E-5.4)
- Large Scale Development (N.J.A.C. 7:7E-7.2)
- High Rise Structures (N.J.A.C. 7:7E-7.14)

The proposed changes are described as follows:

**SUBCHAPTER 1. INTRODUCTION**

**7:7E-1.2 Jurisdiction**

The programs responsible for the issuance of Stream Encroachment Permits and Dam Permits within the Division of Water Resources were transferred to the Division of Coastal Resources in September 1987. The responsibility for the issuance of Water Quality Certificates was transferred from the Division of Water Resources to the Division of Coastal Resources in July 1988. In addition, the Division of Coastal Resources was given responsibility to implement the Freshwater Wetlands Protection Act in September 1987. The proposed amendments to this section reflect these changes and refer to the applicable rules which implement these programs. The amendment also reflects other organizational changes within the Department.

**7:7E-1.5 Coastal [decision-making] decision making process**

Specific language is added to N.J.A.C. 7:7E-1.5(b)iii to reflect one of the Division's long-standing management objectives to encourage the use of waterfront area for water-dependent activities.

The Rules are updated at N.J.A.C. 7:7E-1.5(d)iii to recognize the existence of the State Development and Redevelopment Plan and to allow for consideration of the Plan in the review of a proposed coastal action.

**7:7E-1.6 Mitigation**

The existing general mitigation standard will continue to apply to all mitigation for activities for which no specific mitigation requirement is imposed by the Special Areas Policy.

The portion of the rule that specifically addresses wetlands mitigation is modified to be consistent with the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A) and is reorganized so that it appears at the section which addresses wetlands (N.J.A.C. 7:7E-3.27). Mitigation requirements for intertidal and subtidal shallows are also relocated to be part of the standards addressing those areas (N.J.A.C. 7:7E-3.15).

**SUBCHAPTER 3. SPECIAL AREAS**

**7:7E-3.1 Introduction**

The total number of Special Areas is increased from 46 to 48, with the proposed addition of Coastal High Hazard Areas and Bay Islands. These two areas are taken from existing N.J.A.C. 7:7E-8.19, Flood Prone Areas, and N.J.A.C. 7:7E-3.24, Island corridor, and are reorganized for clarity.

The Special Areas found in the Water's Edge subcategory are further divided into three subgroups by geographic location to better identify their applicability to a specific site: (1) Oceanfront and Raritan and Delaware Bayfront (N.J.A.C. 7:7E-3.16 through 3.19); (2) Barrier and Bay Islands (N.J.A.C. 7:7E-3.20 and 3.21); and (3) Coast-wide Water's Edge (N.J.A.C. 7:7E-3.22 through 7:7E-3.32). This is strictly an organizational change. The reorganized sections would appear in the following order:

Proposed	[Existing]	Description
1. Oceanfront, and Raritan and Delaware Bayfronts		
7:7E-3.16	[7:7E-3.21]	Dunes
7:7E-3.17	[7:7E-3.22]	Overwash Areas
7:7E-3.18	[7:7E-8.19]	Coastal High Hazard Areas
7:7E-3.19	[7:7E-3.23]	Erosion Hazard Areas
2. Barrier and Bay Islands		
7:7E-3.20	[7:7E-3.24]	Barrier Island Corridor
7:7E-3.21	[7:7E-3.24]	Bay Islands
3. Coastwide Water's Edge		
7:7E-3.22	[7:7E-3.20]	Beaches
7:7E-3.23	[7:7E-3.16]	Filled Water's Edge
7:7E-3.24	[7:7E-3.17]	Existing Lagoon Edge
7:7E-3.25	[7:7E-3.18 and 8.19]	Flood Hazard Areas
7:7E-3.26	[7:7E-3.19]	Alluvial Flood Margins
7:7E-3.27	[7:7E-3.25]	Wetlands
7:7E-3.28	[7:7E-3.26]	Wetlands Buffer
7:7E-3.29	[7:7E-3.27]	Cranberry Bogs
7:7E-3.30	[7:7E-3.28]	Wet Borrow Pit Margin
7:7E-3.31	[7:7E-3.29]	Coastal Bluffs
7:7E-3.32	[7:7E-3.30]	Intermittent Stream Corridors

**Special Water Areas**

**7:7E-3.6 Submerged Vegetation**

The definition of "submerged vegetation" is expanded to include *Ulva lactuca* (green algae).

**7:7E-3.14 Wet Borrow Pits**

Wet Borrow Pits may also be defined as State open waters regulated under the Freshwater Wetlands Protection Act Rules. The definition and the policy are modified to ensure consistency with the Freshwater Wetlands Protection Act Rules. Also, filling of wet borrow pits would be permitted, regardless of the development type as long as the proposed activity can meet the acceptability criteria.

**7:7E-3.16 Filled Water's Edge**

A provision is added to ensure that when a proposed water-dependent use is a public walkway in the urban waterfronts of Northern Waterfront and Delaware River Regions, sufficient open space will be provided. A second provision is added to ensure that the development intensity in a Filled Water's Edge area would not exceed the development intensity typically permitted for general land area (N.J.A.C. 7:7E-5.2).

**7:7E-3.18 Natural Water's Edge-Floodplains**

The development limitations of Flood Hazard Area currently addressed by Natural Water's Edge Floodplains and Flood Prone Areas Policies (N.J.A.C. 7:7E-8.19) are consolidated into a new section, renamed as "Flood Hazard Areas" and recodified as N.J.A.C. 7:7E-3.25. The only proposed substantive change to the Natural Water's Edge-Floodplains policy is the provision to limit the intensity of development within the undeveloped portions of the Flood Hazard Areas. This change will enable the Department to be more consistent in its determination of a project's acceptability at this location where developments are currently discouraged if no feasible alternative sites exist outside of the floodplain.

**Coastal High Hazard Areas (New Special Area Policy at N.J.A.C. 7:7E-3.18)**

This section is taken from N.J.A.C. 7:7E-8.9, Flood prone areas, under subchapter 8, Resource Policies. It is one of the four policies of the proposed Oceanfront, and Raritan and Delaware Bayfronts Water's Edge Special Areas Subgroup and is proposed at N.J.A.C. 7:7E-3.18. The Coastal High Hazard Areas (including V zone areas identified on the Federal Flood Insurance Rate Maps and Wave Run-Up Areas behind shore protection structures parallel to the shore along the oceanfront)

are areas that need to be identified early during the location suitability analysis stage of the CLAM methodology. These areas of special concern are therefore moved to subchapter 3, Special Area Policies.

Additionally, a Wave Run-up Area is redefined as a 25-foot wide (instead of the current 50 feet wide) strip of land behind an oceanfront shore protection structure such as a seawall, bulkhead or similar parallel structure. The Department's experience in implementing the 50-foot setback requirement has shown that 50 feet is too great a setback. This revision limits this policy's application to only areas where the force of the wave run-up is of a magnitude that could cause structural damage to buildings.

#### 7:7E-3.22 Overwash Areas

The development of an infill within an existing developed public boardwalk for tourism-related services would be permitted by the revised policy. Such developments would also be permitted in Coastal High Hazard Areas and Erosion Hazard Areas.

#### 7:7E-3.23 Erosion Hazard Areas

This section is updated and refined to: (1) provide a more detailed and precise definition on the Erosion Hazard Areas; (2) provide greater technical information and guidance on how to determine the limits of an erosion hazard area; and (3) inform the public of the availability of a new mapping tool recently developed for the Division by Leatherman et al. of the University of Maryland Mapping Group, which has the capability to produce the relevant historical shoreline change maps necessary for the analysis and calculation of the annual erosion hazard rate of a site along the coast.

The current policy implies that an erosion hazard area is an area upland of the mean high water line that will most likely be eroded in 50 years. Under the proposed modification, an Erosion Hazard Area would be an area upland of the beach that will most likely be eroded in 30 years, for one to four unit dwelling structures, and 60 years, for all other structures. The upland edge of a beach area can be readily identified and is usually marked by natural features such as a dune crest or vegetation line. In a developed or disturbed area, the eight-foot contour line would be used as the edge.

The revised policy will be consistent with the National Flood Insurance Program's newly adopted Guidelines for Erosion Hazard Areas and will enable New Jersey to be eligible for funding allocated for relocation of structures subject to imminent collapse or subsidence.

#### 7:7E-3.24 Barrier Island Corridor

The scope of this policy is reduced to barrier islands only, as it was defined prior to the February 1986 amendment. This will clarify the confusion that has resulted from that expansion. Non-oceanfront islands (bay islands) would be addressed as a separate policy, independent of the oceanfront islands (barrier). This separation would clarify the non-oceanfront islands geographic scope and detail the allowable development intensity and density for water-dependent and other activities on developed or undeveloped non-oceanfront islands.

#### 7:7E-3.25 Wetlands, 7:7E-3.26 Wetlands Buffer, 7:7E-3.28 Wet Borrow Pit Margin and 7:7E-3.30 Intermittent Stream Corridors

These four policies are modified so that they may also be consistent with the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A). Intermittent Streams, like Wet Borrow Pits, may also be defined as State Open Waters under the Freshwater Wetlands Protection Act Rules.

In addition, under N.J.A.C. 7:7E-3.30, an Intermittent Stream Corridor is further defined as drainage areas associated with a high seasonal water table. The minimum corridor width is redefined as a distance of 25 feet measured from the top of the channel banks instead of the channel.

#### 7:7E-3.31 Farmland Conservation Areas

This policy is modified to reflect and support the farmland preservation efforts of the current State and local Farmlands Preservation and Agricultural Development and Retention Programs.

Farmland Conservation Areas now include the certified county Agriculture Development Areas (ADA).

The County Agricultural Development Boards (CADBs) are invited to participate in the review of proposed developments in Farmland Conservation Areas. The acceptability of a non-farm dependent development would be determined based upon: (1) where the site is located (that is, in or outside of a Farmland Conservation Area); (2) whether adequate compensation would be provided for the farmland lost due to conversion of use; and (3) whether the CADB deems the development appropriate

for the site and consistent with the overall agricultural development objectives of the county.

Under the proposed revision, any loss of Farmland Conservation Area due to the development of an approvable project must be adequately compensated by one of the following measures: (1) monetary contribution to the local CADB in the amount equivalent to that of the development easement value of the site; (2) donation of a development easement of an area with the same acreage and soil capability as the site; or (3) any other comparable compensation approved by the Department.

#### 7:7E-3.34 Historic and Archaeological Resources

A provision is added to require that surveys and reports submitted for the identification, evaluation or mitigation of historic and archaeological resources be prepared by professionals who meet the National Park Service's Professional Qualification Standards and that these reports and surveys be prepared in accordance with the professional reporting and survey guidelines of the Department of the Interior as well as the Office of New Jersey Heritage.

#### 7:7E-3.36 Endangered or Threatened Wildlife or Vegetation Species Habitat

Both the endangered or threatened wildlife and vegetation species lists are updated.

#### 7:7E-3.42 Pinelands National Reserve and Pinelands Protection Area and

#### 7:7E-3.43 Hackensack Meadowlands District

Modifications are made to these two policies to clarify the applicability of the Freshwater Wetlands Protection Act Rules in these two Special Districts.

In addition, under N.J.A.C. 7:7E-3.42, the Pinelands Commission is formally recognized as a reviewing agency for the Division for all coastal developments located in the Pinelands National Reserve.

#### 7:7E-3.44 Wild and Scenic River Corridors

This policy is expanded to include Wild and Scenic River Corridors that are protected under the Federal Wild and Scenic River Act (16 U.S.C. §§1271-1278).

#### 7:7E-3.46 Hudson River Waterfront Area

A new provision is proposed for addition to this section which requires that a conservation easement be given to the Department to ensure the continued availability of public access to any Hudson River Waterfront project. It also establishes guidelines for the maintenance of the easement by the permittee.

### SUBCHAPTER 5. GENERAL LAND AREAS

#### 7:7E-5.3 Coastal Growth Rating

The addition of this region in the Coastal Growth Rating classification system specifies Bay Islands' designation status.

The total number of regions is increased from 13 to 15 due to the addition of the Bay Island Region.

The Bay Islands are taken out of the Barrier Island Region, an Extension Region, and redesignated as a Limited Growth Region. This redesignation reflects and reinforces the very restrictive development policy for these islands at N.J.A.C. 7:7E-5.3(b).

The Special Urban Areas list is updated in the Urban Area Region.

An approximately 600 acre area in Stafford Township, Ocean County, bounded by Route 72 to the north, Route 9 to the east, Garden State Parkway to the west and Cedar Run Creek to the south, is proposed for re-designation from a Limited Growth Region to an Extension Region.

The existing land use pattern shows that an extensive amount of growth has already occurred in this area, even though the area has been designated as a Limited Growth Region for the last decade. The area is readily accessible to public roadways and a sewerage treatment facility with sufficient capacity to service the anticipated growth. Because it is surrounded on three sides by lands with severely restricted development potential, it will have the ability to receive future growth without inducing much secondary impact beyond the area. Its redesignation is therefore recommended.

#### 7:7E-5.4 Environmental Sensitivity Rating

The Rules would no longer use vegetation as one of the two indicators for the environmental assessment of the site. Since the suitability of a site for development is based primarily upon the site's capability to

accommodate the proposed development, soil capability alone would better indicate a site's environmental sensitivity. Vegetation is considered as an environmental asset upon a site. It is a valuable resource that should be preserved as much as possible but it is not an accurate measure of the development limitation or the environmental sensitivity of any site. The preservation of the existing vegetation on a site is encouraged (see N.J.A.C. 7:7E-8.8, Vegetation).

**7:7E-5.5 Development Potential**

A provision is added at N.J.A.C. 7:7E-5.5(b)4ii to identify sites, which are located more than 1000 feet from an adequate wastewater treatment system and are characterized by soils unsuited for on-site sewage disposal systems, as areas of Low Growth Potential.

**7:7E-5.7 Land Acceptability Tables**

The Land Acceptability Table for the Limited Growth Region has been modified so that the acceptable growth intensity for a site with Medium Development Potential and Low Environmental Sensitivity is changed from Low Intensity to Moderate Intensity.

**SUBCHAPTER 7. USE POLICIES**

**7:7E-7.2 Housing use policies**

The affordable housing policy (N.J.A.C. 7:7E-7.2(f)) was deleted as the result of action taken by Legislature and Governor in 1986 (see P.L. 1986, c.145).

A new policy addressing detached single family or attached two family Residential Development, adjusts the application of the rules on coastal zone management (N.J.A.C. 7:7E) to the level appropriate for single family or duplex developments. Specifically, this policy will provide the Department more flexibility in regulating small infill developments when they cannot be designed to comply with Erosion Hazard Area or Coastal High Hazard Area Policies. This policy will replace the Affordable Housing Use Policy under N.J.A.C. 7:7E-7.2(f).

The subsection addressing Large Scale Multi-Use Development (N.J.A.C. 7:7E-7.2(i)) was written as a way to balance housing demands and uncontrolled growth by exempting large, planned residential developments from the General Location Policies. One of the areas this policy was tailored to accommodate is the designated Low Growth Region outside of Atlantic City, in anticipation of the housing demands that would be generated as a result of the casino industry.

A review of the Division records shows that the policy has had little effect on the overall housing development pattern in the Coastal Zone since its adoption in 1978. It is proposed for deletion because it was intended to serve a special need that no longer exists.

**7:7E-7.3 Resort/Recreational Use**

A definition is added to N.J.A.C. 7:7E-7.3(d) to clarify the applicability of the Marina policy. Also, detailed guidelines are added to the pump out requirement.

**7:7E-7.5 Parking Facilities**

Proposed language at N.J.A.C. 7:7E-7.5(d) would provide that the construction of intercept parking facilities is encouraged and required if determined necessary at locations where the access route(s) to and from an area is limited and cannot be readily expanded to service the existing or projected traffic volume.

**7:7E-7.8 Mining Use Policies**

This policy has been amended at N.J.A.C. 7:7E-7.8(a)8 to provide that disruption of certain agricultural operations is no longer totally prohibited during mining activities but may be allowed if there is no feasible alternative.

**7:7E-7.14 High Rise Structures**

This policy is refined to provide more detailed guidance concerning the location acceptability of high rise structures, especially along the waterfronts. Measures are incorporated to limit the construction of high rise structures to designated Growth Regions, under the General Land Use Policies and, within the Growth Regions along the oceanfront, high rise structures would be allowed in areas zoned for commercial use only. This refinement should prevent the build-up of high rise buildings closely aligned along the coastline and permit the construction of high rises only at portions of a waterfront area where these structures could serve as a focal point of a community, induce economic growth and generate additional water-oriented attractions to complement the natural amenities of a waterfront for public use.

Measures are also incorporated to ensure that sufficient usable public open space will be provided at the ground level. Such open space would serve a multitude of uses in a densely developed urban environment, including opportunities for shelter and relaxation.

Because of the additional setback requirements and location restrictions, there will be a reduction in the potential for high rises to adversely affect beaches. A condition of the existing policy (N.J.A.C. 7:7E-7.14) prohibiting the construction of high-rise structures that would adversely affect the beach is therefore proposed for deletion.

**SUBCHAPTER 8. RESOURCE POLICIES**

**7:7E-8.10 Air Quality**

A proposed addition to this section would require major developments to conduct and/or contribute to monitoring of the project's impact and mitigate for any impact if such is found to be necessary. Wherever possible, use of mass transportation is encouraged.

**7:7E-8.12 Scenic Resources and Design**

As with the High Rise Structure policy, this policy is modified to ensure that the scenic resources of the Coastal Zone would be enhanced and used for the benefit of an entire coastal community rather than just those who are the occupants of the immediate water's edge.

Measures are incorporated to provide visual and physical linkages between the waterfront and the rest of the community.

**7:7E-8.14 Solid Waste**

This policy is proposed for deletion because the standard requirements for meeting this policy (that is, the incorporation of a solid waste recycling plan for a coastal development) is now mandatory on a Statewide basis through the enactment of the New Jersey Statewide Mandatory Source Separation and Recycling Act (N.J.A.C. 13:1E-99.11 et seq.; P.L. 1987, c.102).

**7:7E-8.15 Energy Conservation**

This policy is proposed for deletion because the standard requirements for meeting this policy (that is, the incorporation of an energy conservation plan for a coastal development) is similar to the existing Energy Subcode requirements (N.J.A.C. 5:23-3.18) of the Uniform Construction Code, N.J.A.C. 5:23, promulgated pursuant to the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., implemented by the Department of Community Affairs.

**7:7E-8.16 Traffic**

This section is proposed for recodification from N.J.A.C. 7:7E-8.16 to 7:7E-8.15.

Three additions are proposed for inclusion in this policy. One would ensure that adequate consideration would be given to the utilization of mass transportation systems. The second would ensure that adequate parking would be provided for a development. The third is a mitigation requirement to assure that no project would increase traffic levels at any intersection beyond acceptable levels.

**7:7E-8.17 Wet Soils and High Permeability Moist Soils**

This policy is proposed for deletion because the development limitations of these two types of soil have already been accounted for in the assessment of a site in the revised Environmental Sensitivity Rating Policy (N.J.A.C. 7:7E-5.4).

**7:7E-8.19 Flood Prone Areas**

As noted earlier, this policy is relocated to subchapter 3, Special Areas, and reorganized under two policies, Coastal High Hazard Areas (new) and Flood Hazard Areas (which also includes the existing Natural Water's Edge—Floodplains Policy).

The proposed revisions to the following sections are self-explanatory wording changes for updating or clarification purposes:

- 7:7E-2.1 Introduction
- 7:7E-2.3 Mapping and acceptability determination
- 7:7E-3.4 Prime Fishing Areas
- 7:7E-3.15 Intertidal and Subtidal Shallows
- 7:7E-3.38 Public open spaces
- 7:7E-3.39 Special Hazard Areas
- 7:7E-3.41 Special Urban Areas
- 7:7E-4.11 Acceptability Condition for Uses
- 7:7E-4.11(d) Docks and piers (commercial)
- 7:7E-4.11(e) Docks and piers (recreational)

- 7:7E-7.4(d) General energy siting procedure
- 7:7E-7.10(b)iii Casino hotels
- 7:7E-7.11(e) Structural shore protection
- 7:7E-8.11 Public Access to the Waterfront
- 7:7E-8.18 Fertile Soils

The rationale for the foregoing changes is drawn from the following documents:

1. New Jersey Department of Environmental Protection, Bureau of Planning and Project Review, "Coastal Storm Hazard Mitigation: Atlantic Barrier Islands and Ocean City, New Jersey," 1985.
  2. New Jersey Department of Environmental Protection, Bureau of Flood Plain Management, "Coastal Storm Vulnerability Analysis, Barrier Islands of Atlantic County, New Jersey," 1983.
  3. New Jersey Department of Environmental Protection, Bureau of Flood Plain Management, "Coastal Storm Vulnerability Analysis, Ocean City, Cape May County, New Jersey," 1983.
  4. Yoshinobu Ashihara, Exterior Design in Architecture, New York: Van Nostrand Reinhold Company, 1970.
  5. Monmouth County Planning Board and the Trust for Public Land, "Bayshore Waterfront Access Plan," Lincroft, New Jersey, 1987.
  6. New Jersey Sea Grant Extension Service, Southern Ocean Resource Center, "Status of Public Dockage and Marina Facilities in the New Jersey Coastal Zone," April, 1987.
  7. New Jersey Department of Environmental Protection, Division of Coastal Resources, "The Availability of and Demand for Sanitary Sewage Handling Facilities on New Jersey's Coastal Waters," January 1989.
- All of the Department's publications are available from the Division of Coastal Resources, 501 East State Street, CN 401, Trenton, NJ 08625.

#### Social Impact

In general, it is anticipated that this proposed re-adoption with amendments will enable the Coastal Management Program to be more responsive to the public and more efficient in its day-to-day operations. The updated rules will better equip the Department to address certain environmental and administrative concerns in situations where the current rules were found to be inadequate. Also, the rules will be more closely correlated in terminology and procedure with the more recently adopted rules from other land-use and resource protection programs, such as the Freshwater Wetlands Protection Program and Farmland Preservation Program, to ensure consistency and efficiency among these related programs.

The proposed re-adoption of the Rules will allow the Department to continue in full force and effect the beneficial environmental programs resulting from the original promulgation of the Rules. The proposed re-adoption of the Rules would provide the Department with regulatory structure to enforce its responsibilities mandated and authorized pursuant to the Coastal Area Facility Review Act, The Wetlands Act and the Waterfront Development Act. The effects of these Rules have been to restrict or prohibit certain uses in parts of the Coastal Zone, while encouraging development and other uses in other parts.

The implementation of these Rules has increased public awareness of the Coastal Zone and its problems. Issues such as public access to the waterfront, high rise construction, energy facility siting, and the use of urban waterfronts have all been the subject of recent public discussion and debate. The Coastal Management Program has not been the only cause of this concern, but it has sponsored and will continue to promote, educational programs and publications, research, pilot projects, and revisions to State policies to increase public awareness and use of the Coastal Zone.

The Coastal Zone Management Rules will continue to be a major tool by which policy decisions are made in the Coastal Zone.

The proposed incorporation of additional provisions to N.J.A.C. 7:7E-3.31 (Farmland Conservation Areas) to preserve farmlands that are critically in need of protection would benefit the farmers and society at large. The farmland owners will be indirectly affected by the possible shift in the future real estate value of their property as a result of this particular proposal. Depending on the circumstances of each individual case, this shift may or may not be viewed as favorable.

The proposed re-designation of a 600-acre site in Stafford Township, Ocean County, from low to moderate growth would benefit developers, especially developers of large scale (CAFRA scale or greater) projects, because the allowable intensity of development of a CAFRA project within the to be re-designated area would be increased from 40 to 80 percent or from five to 40 percent, provided all other conditions remain the same. The Township of Stafford would also benefit from this change,

because it will be able to extend municipal sewer service to this area and implement its Master Plan's land use designation for this area without being inconsistent with the Acceptable Development Intensity permitted by N.J.A.C. 7:7E-5.7.

The two additional location criteria of the High Rise Structure Policy (N.J.A.C. 7:7E-7.14) would benefit all shore visitors and residents. The modification of the location selection process would curtail the formation of an inordinate number of residential high rise structures immediately adjacent to and along the waterfront, and would promote a more efficient waterfront development pattern which would capitalize on the waterfront amenities benefiting a large segment of the public. The local coastal communities, in particular, would also benefit from the proposed incorporation of open space and setback considerations in the design of high rise structures.

Applicants would not necessarily be adversely affected by this change, although they would need to be more prudent in their selection of a waterfront site for high rise development prior to committing themselves to developing such projects.

#### Economic Impact

As with the social impacts, the public at large will benefit economically from the proposed re-adoption with amendments and certain segments of the society will experience a more direct effect. In general, the efficiency of the Coastal Management Program would be improved by the elimination of duplication in the Rules, and the further clarification of certain existing language. This improvement is significant, considering the large number of coastal permit construction applications that are reviewed for their compliance with the Rules on Coastal Zone Management by the Department every year. Currently, the Department receives approximately 150 CAFRA, 120 Tidal Wetlands and 1400 Waterfront Development Permit applications annually. There has been a steady increase in the quantity of these applications received over the years, a trend that is likely to continue in the future. To improve upon the clarity and effectiveness of the Rules is, therefore, not only considered desirable but necessary from an economic standpoint by the Department.

In particular, the proposed amendments to the rules on Farmland Conservation Areas, High Rise Structures and Scenic Resources will have a positive long term effect on the general economy of the Coastal Area. This effect is due to the fact that tourism, which is the number one industry in the Coastal Area, is intrinsically connected to the quality of the shore environment. Ultimately, the public will economically benefit from the additional measures that would be taken to minimize the loss of these irreplaceable and irreplaceable natural resources due to indiscriminate development.

The incorporation of additional development acceptability guidelines into the Rules on the High Rise Structures and Scenic Resources may pose an immediate negative short term economic impact to those coastal communities that want to attract high intensity settlements to their waterfronts, but, because the restrictions will prevent over-utilization of the waterfront resource, the long term economic effects will prove to be favorable.

As discussed earlier under social impact, the preservation, retention and development of farmlands indirectly affect the landscape and tourism industry of the coast. More importantly, the preservation and retention of farmland directly affects the agricultural economy of the Coastal Zone. With the proposed revision, the farmers and the general public would benefit from these following refinements to N.J.A.C. 7:7E-3.31 (Farmland Conservation Areas): (1) the proposed location evaluation guidelines designed to steer development incompatible with agricultural activities away from viable and productive farmlands; and (2) the proposed mitigation measure aimed to preserve as much farmland that is in critical need of protection as that farmland that is being irreversibly converted into non-agricultural uses. Farmland owners who want to participate in the State or local Farmlands Preservation Program would benefit from the new source of funding or an increase in demand for development easements as provided in the Agricultural Retention and Development Act, N.J.S.A. 4:1C-11 et seq. Farmland owners interested in maximizing the real property value of their lands may or may not be affected by this rule change depending on the location and the current improvements on the land.

Overall, the Department does not anticipate that this particular rule refinement will have a noticeable short term impact upon the agricultural communities or the agricultural economy, because this provision applies only to CAFRA scale projects. Further, most of the rural areas typically do not have the infrastructure necessary to support such developments.

**Environmental Impact**

The proposed readoption with amendments will have the positive environmental impact of continuing the regulatory framework necessary to implement the environmental protection benefits of the State and Federal Coastal Zone Management, Wetlands and Waterfront Development legislation.

The coastal ecosystem is fragile and special, and is characterized by a combination of beaches and the ocean, tidal and inland wetlands, flood plains, estuarine areas, bays, streams and stream corridors, vegetation communities and wildlife habitats. These natural features make the area a desirable place to visit, which in turn fosters the State's tourist industry. The same features make the coastal region a productive area for agriculture and commercial and recreational fishing. If the ecosystem is not protected, these natural resources and processes will be harmed.

These Rules have provided a balanced means of protecting the Coastal Zone while allowing careful development within the area.

The environment will be better protected by the refinements of the Rules in the following areas:

1. **Resource identification refinements:** the presence or absence of natural and cultural resources would be better identified and inventoried for a project site due to a more accurate resource definition or a more comprehensive set of guidelines on how the resources may be identified. The rule provisions that are refined for this purpose include: Barrier Island Corridor, Wetlands, Wetlands buffer, Historic and archaeological resources, Wild and scenic river corridors, Endangered or Threatened Wildlife or Vegetation Species Habitat, Farmland Conservation Areas, Public open space and Scenic resources. The Department's ability to protect these resources will be enhanced by this increased accuracy in resource identification or delineation.

2. **Policy refinement:** Clarifications and guidelines are added to the use and development acceptability standards contained in the current rules on Overwash fans, Erosion Hazard Areas, Barrier Island Corridor, Farmland Conservation Areas, High rise structures, Traffic, Wet soils and high permeability moist soils and Flood Prone Areas. With the exception of Flood Prone Areas, the acceptability standards for developments will be tightened as a result of the refinements and, therefore, will have a positive impact upon the environmentally sensitive areas.

**Regulatory Flexibility Analysis**

The proposed readoption with amendments would apply to most development activity within the Coastal Zone. In general, the majority of the developers subject to the rules would be "small businesses" as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These small businesses include real estate developers and builders and contractors in the building industry.

In order to comply with these rules, the small businesses may have to provide documentation demonstrating a project's consistency with the rules. In doing so, it is likely that small businesses will need to retain the services of professional engineers, land surveyors, and environmental consultants. However, the amendments will clarify the compliance requirements and thus lessen the burden on small businesses by reducing the professional services needed. It is anticipated that initial capital costs for small businesses and annual costs of compliance would be, at most, minimal.

The Department proposes to limit the application of these rules in the case of single-family and duplex residential development to a minimum at N.J.A.C. 7:7E-7.2(f). This change should significantly reduce the amount of work and cost necessary for these projects to be in compliance with the rules. The estimated permit fee and compliance cost would be reduced to anywhere between \$250.00 and \$1,000 as a result. For commercial developments or residential developments other than a single-family or duplex residential developments, the permit fee and compliance costs would remain the same as the current amount, which varies from project to project and ranges between \$250.00 and \$5,000. In developing this proposed readoption with amendments, the Department has balanced the need to protect the environment against the economic impact of the rules and has determined that to further minimize the impact of these rules would endanger the environment, public health and public safety. Therefore, no exemption from the coverage is provided.

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

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

CHAPTER 7:7E  
[COASTAL RESOURCE AND DEVELOPMENT POLICIES]  
COASTAL ZONE MANAGEMENT

## SUBCHAPTER 1. INTRODUCTION

## 7:7E-1.1 Purpose

(a) (No change.)

(b) In 1977, the Commissioner of the Department of Environmental Protection submitted to the Governor and Legislature the Coastal Management Strategy for New Jersey-CAFRA Area (September 1977), prepared by the Department as required by CAFRA, N.J.S.A. 13:19-16, and submitted for public scrutiny in late 1977. The Department revised the Coastal Management Strategy for public review as the New Jersey Coastal Management Program—Bay and Ocean Shore Segment and Draft Environmental Impact Statement (EIS). In August 1978 the Governor submitted the revised New Jersey Coastal Management Program—Bay and Ocean Shore Segment and Final EIS for Federal approval, which was received in September 1978. In May 1980, the Department submitted further revisions, published as the Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement, for public review. In August 1980, the Governor submitted the final New Jersey Coastal Management Program and Final Environmental Impact Statement for Federal approval, which was received in September 1980. The Rules on Coastal [Resource and Development Policies] **Zone Management** (Rules) constitute the substantive core of the program. The Rules were amended on June 4, 1981, January 12, 1982, April 19, 1982, [and] February 7, 1983, **February 3, 1986, August 15, 1988 and May 15, 1989.**

(c) (No change.)

## 7:7E-1.2 Jurisdiction

(a) General: This chapter shall apply to five categories, as defined in N.J.A.C. 7:7E-1.3(c) through (g), of actions or decisions by the Department on uses of coastal resources within or significantly affecting the coastal zone:

1. (No change.)

**2. Division management actions:**

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

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

[4.]**5.** DEP management actions affecting the coastal zone; **and**

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

(b) and (c) (No change.)

(d) **Division management actions: This chapter shall apply to all actions of the Division of Coastal Resources within the Coastal Zone to the extent statutorily permissible:**

**1. Permits for use of a floodway (N.J.S.A. 58:16A-50 et seq.);**

**2. Promulgation of rules concerning land use in flood hazard areas (N.J.S.A. 58:16A-50 et seq.);**

**3. Certification pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. §§1251 et seq. (water quality certification);**

**4. Permits for activities regulated pursuant to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.); and**

**5. Dam Permits (N.J.S.A. 58:4-1).**

[(d)](e) Consistency determinations: This chapter shall apply to decisions on the consistency or compatibility of proposed actions by Federal, State, and local agencies with the Coastal [Resources and Development Policies] **Zone Management**, including, but not limited to, determinations of federal consistency under Section 307 of the Federal Coastal Zone Management Act, 16 U.S.C. §1451 et seq., determinations of consistency or compatibility under the Coastal Zone Management Act, comments on Draft and Final Environmental Impact Statements prepared under the National Environmental Policy Act, 42 U.S.C. §4321 et seq., and comments on other public and private plans, programs, projects and policies.

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

[(f)](g) This chapter shall apply, to the extent statutorily permissible, to the following DEP management actions in or affecting the coastal zone in addition to those noted at N.J.A.C. 7:7E-1.1:

1. Tidelands [resource council] **Resource Council:** Conveyances of State-owned tidelands (N.J.S.A. 12:3-1 et seq.).

2. Division of Water Resources:
  - [i. Permits for use of a floodway (N.J.S.A. 58:16A-50).
  - ii. Promulgation of regulations concerning land use in delineated flood hazard areas (N.J.S.A. 58:16A-50.)
    - [iii.]i. (No change in text.)
    - iv. Certification under Section 401 of the Federal Clean Water Act (water quality certificates.)
      - [v.]ii. (No change in text.)
      - vi.]iii. Wastewater Treatment Construction Grants (N.J.S.A. 26:2E-1 et seq., P.L. 1985, c.329, and N.J.S.A. 58:11B-1 et seq.)
        - [vii.-xv.]iv.-xii. (No change in text.)
        - xvi. Dam Permits (N.J.S.A. 58:4-1).]
  3. (No change.)
  4. Division of Solid Waste Management: [Approval of sanitary landfill site] **Certification of solid waste facilities** (N.J.S.A. 13:1E-1 et seq.).
  5. Green Acres and [Recreation] **Division of Parks and Forestry**:
    - i.-iv. (No change.)
    - 6.-7. (No change.)

(g) DEP planning actions: This chapter shall provide the basic policy direction for the following planning actions undertaken by DEP in the coastal zone as the lead State agency for coastal management under Section 306 of the Federal Coastal Zone Management Act.

1. Division of Coastal Resources:
  - i. (No change.)
  - ii. **Navigational dredging; and**
    - [ii.]iii. (No change in text.)
2. Division of Water Resources:
  - i. Areawide water quality management ("208")[.];
  - ii. **Allocation of planning grants for the development of local storm-water management ordinances** (P.L. 1981, c.32, and N.J.S.A. 40:55D-1 et seq.); and
  - iii. **Allocation of Wastewater Treatment Construction Grants** (P.L. 1985, c.329, and N.J.S.A. 58:11B-1 et seq.).
3. Division of Environmental Quality: [i.] Air quality planning[.];
  - [ii. Solid waste management.]
4. **Division of Solid Waste Management: Solid waste management.**
  - [4.]5. Green Acres and [Recreation] **Division of Parks and Forestry**: Planning for public acquisition of coastal lands.

#### 7:7E-1.5 Coastal decision-making process

(a) General: Decisions on uses of coastal resources shall be made using the three-step process comprising the Location Policies (subchapters 2 through 6), the Use Policies (subchapter 7), and the Resource Policies (subchapter 8) of this chapter. Depending upon the proposed use, project design, location, and surrounding region, different specific policies in each of the three steps may be applicable in the coastal decision-making process. The **Rules on Coastal [Resources and Development Policies] Zone Management** address a wide range of land and water types (locations), present and potential land and water uses, and natural, cultural, social and economic resources in the coastal zone. DEP does not, however, expect each proposed use of coastal resources to address all Location Policies, Use Policies, and Resource Policies. Rather, the applicable policies are expected to vary from proposal to proposal. Decisions on the use of coastal resources in the Hackensack Meadowlands District will be made by the Hackensack Meadowlands Development Commission, as lead agency, and by the Department, consistent with the Hackensack Meadowlands District Master Plan, its adopted components and management programs.

(b) Principles: The Coastal [Resource and Development] **Zone Management** Policies represent the consideration of various conflicting, competing, and contradictory local, State, and national interests in diverse coastal resources and in diverse uses of coastal locations. Numerous balances have been struck among these interests in defining these policies, which reduce but do not presume to eliminate all conflicts among competing interests. One reason for this intentional balancing and conflict reducing approach is that coastal management involves explicit consideration of a broad range of concerns, in contrast to other resource management programs which have a more

limited scope of concern. Decision-making on individual proposed actions using the Coastal [Resource and Development] **Zone Management** Policies must therefore consider all three steps in the process, and weigh, evaluate, and interpret inevitably complex interests, using the framework established by the policies. In this process, interpretations of terms, such as "prudent", "feasible", "minimal", "practicable", and "maximum extent", as used in a specific policy or combinations of the policies, may vary, depending upon the context of the proposed use, location, and design. Finally, these principles should not be understood as authorizing arbitrary decision-making or unrestrained administrative discretion. Rather, the limited flexibility intentionally built into the Coastal [Resource and Development] **Zone Management** Policies provides a mechanism for incorporating professional judgment by DEP officials, as well as recommendations and comments by applicants, public agencies, specific interest groups, corporations, and citizens into the coastal decision-making process.

1. In the application of administrative discretion, DEP officials will be guided by eight basic coastal policies, which summarize the direction of the specific policies.

- i. (No change.)
- ii. Concentrate rather than disperse the pattern of coastal residential, commercial, industrial, and resort development, [and] encourage the preservation of open space, and **ensure the availability of suitable waterfront areas for water dependent activities.**
- iii. Employ a method for decision making which allows each coastal location to be evaluated in terms of both the advantages and the disadvantages it offers for development and **in terms of its consistency with the goals and objectives of the State Development and Redevelopment Plan.**
- iv.-vi. (No change.)
- vii. Maintain and upgrade existing energy facilities, and site additional energy facilities determined to be needed by the [New Jersey Department of Energy and Economic Development (DOE)] **State Energy Master Plan** in a manner consistent with the policies of this Coastal Management Program.
- viii. (No change.)
- (c) (No change.)

#### 7:7E-1.6 Mitigation

[(a) When a permit shall allow the disturbance or loss of wetlands (see N.J.A.C. 7:7E-3.25) by filling or other means, this disturbance or loss shall be compensated for by the creation or restoration of an area of wetlands at least twice the size of the surface area disturbed, unless the applicant can prove through the use of productivity models or other similar studies, that by restoring or creating a lesser area, there will be no net loss in the environmental value of wetlands or intertidal shallows in the aquatic system. Mitigation must be performed prior to or concurrent with activities that will permanently disturb wetlands or intertidal and subtidal shallows and immediately after activities that will temporarily disturb these habitats. The intent of the policy is to assure no net loss of aquatic habitat productivity, including flora and fauna.

(b) Where the Division permits mitigation surface area of less than 2:1, monitoring will be required by the permittee to validate the productivity model. In such cases, the Division requires additional mitigation if this indicates a net loss. Under no circumstances shall the mitigation area be smaller than the disturbed area. Creation of wetlands from intertidal and subtidal shallows is not an acceptable form of mitigation, nor is transfer of title of existing wetlands or intertidal or subtidal shallows to a government agency or conservation organization. The filling or destruction of wetlands or other environmentally sensitive resource, even if compensated for by mitigation, shall not be permitted unless acceptable under the applicable special area policy (N.J.A.C. 7:7E-3.)

[(c)](a) Mitigation shall [also] be selectively considered on a case-by-case basis as compensation for [other policies not able to be met by a particular project] **the loss or degradation of a particular natural resource.** In general, mitigation should be similar in type and location to the resource disturbed or destroyed, [i.e.] that is, replacement in kind within the same watershed. The Division will, however, consider proposals for mitigation that differ in type and/or location from the

disturbed or destroyed resource provided the mitigation would provide a major contribution to meeting [one of] the Basic Coastal Policies. **Requirements for mitigation of a particular resource are addressed more specifically in each applicable Special Areas Policy (N.J.A.C. 7:7E-3.1 through 3.48).**

## SUBCHAPTER 2. LOCATION, USE AND RESOURCE POLICIES

### 7:7E-2.1 Introduction

The coastal land and water areas of New Jersey are diverse. The same development placed in different locations will have different impacts on the coastal ecosystem and built environment as well as different social and economic implications. Different policies are therefore required for different locations. This subchapter and subsequent subchapters define the Location, Use and Resource Policies of the Coastal Program. [These policies are] **The application of the Location Policies, in conjunction with the Use and Resources Policies, for the purpose of evaluating the suitability of a development** is also known as the Coastal Location Acceptability Method or CLAM. This presentation of the policies is lengthy and detailed because the coast is large, varied, and complex. The method of applying the policies is, however, relatively simple.

### 7:7E-2.3 Mapping and acceptability determination

(a) The Coastal Location Acceptability Method (CLAM) is a nine-step process which determines DEP policy for any proposed coastal use in any coastal location. The first six steps are the mapping and policy determination process to assess [Locational Acceptability] **location acceptability [Determinations,]. Steps 7 and 8 refine the location acceptability determinations** by reviewing the proposed use in terms of Uses and Resources Policies. Step 9 is the synthesis of Location, Use and Resource Policies.

#### CLAM Location Policy Analysis:

- Step 1. Identify and map site and surrounding region.
- Step 2. Identify and map Special Areas.
- Step 3. Determine [and map] **the applicable** Special Area Policies.
- Step 4. Identify and map General Areas.
- Step 5. Determine [and map] **the applicable** General Areas Policies.

Step 6. Map Final Location Acceptability and list Location Policy conditions.

#### CLAM Use Policy Analysis:

Step 7. Identify applicable Use Policies, evaluate the proposed use, and, if necessary, modify the Location Acceptability Determination and list Use Policy conditions.

#### CLAM Resource Analysis:

Step 8. Identify applicable Resource Policies, evaluate the proposed use, and, if necessary, modify the Location Acceptability Determination and list Resource Policy conditions.

#### CLAM Synthesis:

Step 9. Determine final acceptability of proposed use, summarize and synthesize the final acceptability of a proposed use at a proposed location in terms of the applicable Location, Use and Resource Policies. Approval will [only] be given **only** if a proposal satisfies all three sets of policies. In particular, applicants should note that applications that do not satisfy Location Policies will not be approved even if the Use and Resource Policies are satisfied.

## SUBCHAPTER 3. SPECIAL AREAS

### 7:7E-3.1 Introduction

(a) Special Areas are those [45] **48** types of coastal areas which merit focused attention and special management policies. This subchapter divides Special Areas into Special Water Areas (See N.J.A.C. 7:7E-3.2 through [3.16][3.15]), Special Water's Edge Areas (See N.J.A.C. [7:7E-3.17] **7:7E-3.16** through [3.31][3.32]), Special Land Areas (See N.J.A.C. [7:7E-3.32] **7:7E-3.33** through [3.34] **3.35**), and Coastwide Special Areas (See N.J.A.C. [7:7E-3.35] **7:7E-3.36** through [3.45][3.48]).

1. Special Water Areas extend landward to the mean high water line **or the level of normal flow in non-tidal waters.**
2. (No change.)

3. **The Special Water's Edge Areas (see N.J.A.C. 7:7E-3.16 through 7:7E-3.32) can be further subdivided into three subcategories, depending on their locations:**

- i. Oceanfront, and Raritan and Delaware Bayfronts (N.J.A.C. 7:7E-3.16 through 3.19);
- ii. Barrier and Bay Islands (N.J.A.C. 7:7E-3.20 and 7:7E-3.21); and
- iii. Coastwide Special Water's Edge Areas (N.J.A.C. 7:7E-3.22 through 3.32).

4. **Special Water's Edge Areas in (a)3i and ii above, are found only next to the ocean, major open bays and backbay waters, while Coastwide Special Water's Edge Areas are found adjacent to tidal as well as non-tidal waters.**

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

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

(b) (No change.)

(Agency note: N.J.A.C. 7:7E-3.2 through 3.15 are Special Water Areas.)

### 7:7E-3.4 Prime [fishing areas] Fishing Areas

(a) Prime Fishing Areas include tidal water areas and water's edge areas which have a demonstrable history of supporting a significant local quantity of recreational or commercial fishing activity. The area includes all coastal jetties and groins and public fishing piers or docks. Prime Fishing Areas also include all red line delineated features within the State of New Jersey's three-mile territorial sea illustrated in: B.L. Freeman and L.A. Walford (1974) Angler's Guide to the United States Atlantic Coast Fish[.]; Fishing Grounds and Fishing Facilities, Section III and IV or as indicated on New Jersey's Specific Sport and Commercial Fishing Grounds Chart (page 14) contained in "New Jersey's Recreational and Commercial Ocean Fishing Grounds." Long and Figley (1984)[.]; **recently developed artificial reefs off the New Jersey coast as identified in Figley (1989) "A Guide to Fishing and Diving New Jersey's Artificial Reefs", and The Fishing Grounds of Raritan, Sandy Hook and Delaware Bays as determined in Figley and McCloy (1988) "New Jersey's Recreational and Commercial Fishing Grounds of Raritan Bay, Sandy Hook Bay and Delaware Bay and The Shellfish Resources of Raritan Bay and Sandy Hook Bay"**. While this information source applies only to the Delaware and Raritan Bay and Atlantic Ocean shorefronts, [prime fishing areas] **Prime Fishing Areas** do occur throughout the coastal zone.

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

### 7:7E-3.6 Submerged [vegetation] Vegetation

(a) A ["submerged vegetation"] **"Submerged Vegetation"** special area consists of estuarine water areas supporting rooted vascular seagrasses such as widgeon grass (*Ruppia maritima*), **attached green algae (*Ulva lactuca*)** and eelgrass (*Zostera marina*). Eelgrass beds are limited to shallow portions of the Shrewsbury River, Barnegat Bay and Little Egg Harbor. Widgeon grass is for the most part limited to shallow areas of upper Barnegat Bay. Detailed maps of the distribution of the above species for New Jersey, and a method for delineation, are available from DEP in the DEP-DCR sponsored study, The New Jersey Submerged Aquatic Vegetation Distribution Atlas (Final Report) February, 1980, conducted by Earth Satellite Corporation.

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

7:7E-3.8 (No change.)

7:7E-3.9 (No change.)

### 7:7E-3.10 Marina [moorings] Moorings

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

(d) [Maintenance] **New or maintenance** dredging in the marina mooring area and access channel is [encouraged] **conditionally acceptable**, provided that [turbidity is controlled and that there is an acceptable dredge spoil disposal site] **the proposed dredging complies with the provisions applicable to new or maintenance dredging, N.J.A.C. 7:7E-4.11(f) and (g).**

(e) (No change.)

7:7E-3.14 Wet [borrow pits] **Borrow Pits**

(a) "Wet [borrow pits] **Borrow Pits**" are scattered [man-made] artificially created lakes that are the results of surface mining for coastal minerals extending below groundwater level to create a permanently flooded depression. This includes but is not limited to, flooded sand, gravel and clay pits, and stone quarries. **Where a Wet Borrow Pit is also a Wetland and/or Wetlands Buffer, Wetlands and/or Wetlands Buffer Policies shall apply (see N.J.A.C. 7E-3.27 and 3.28).**

(b) **All proposed dredging and filling activities shall comply with the applicable Freshwater Wetlands Protection Act Rules (see N.J.A.C. 7:7A).**

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

[(c)] (d) Surface mining is conditionally acceptable provided **condition (b) above is met and** the Use Policies for Mining (see N.J.A.C. 7:7E-7.8) are complied with.

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

[(e)] (f) Disposal of dredge spoil is conditionally acceptable **provided condition (b) above is met and that:**

1.-2. (No change.)

[(f)] (g) Filling of [wet borrow pits] **Wet Borrow Pits** for [residential] construction is conditionally acceptable provided that:

1.-6. (No change.)

[(g)-(h)] (h)-(i) (No change in text.)

7:7E-3.15 Intertidal and [subtidal shallows] **Subtidal Shallows**

(a) (No change.)

(b) Development, filling, new dredging or other disturbance is generally discouraged but may be permitted in accordance with the Use Policy for the applicable water body type (see N.J.A.C. 7:7E-4).

**1. If destruction of intertidal and subtidal shallows takes place, mitigation shall be carried out at a ratio of one acre created to one acre lost. Mitigation sites shall be located within the same estuary whenever feasible. However, dredging activities and specific filling activities found approvable under N.J.A.C. 7:7E-4.11(j)2iii(1) and (2) are exempt from this mitigation requirement.**

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

## [7:7E-3.16 Filled water's edge

(a) "Filled water's edge" areas are existing filled areas lying between wetlands or water areas, and either the upland limit of fill, or the first paved public road or railroad landward of the adjacent water area, whichever is closer to the water. Some existing or former dredge spoil disposal sites and excavation fill areas are filled water's edge.

(b) The "waterfront portion" is defined as a contiguous area at least equal in size to the area within 100 feet of navigable water, measured from the Mean High Water Line (MHWL). This contiguous area must be accessible to a public road and occupy at least 30 percent of the navigable water's edge.

(c) On filled water's edge sites with direct water access (i.e., those sites without extensive inter-tidal shallows or wetlands between the upland and navigable water), development shall comply with the following conditions:

1. The waterfront portion of the site shall be developed with a water dependent use (see N.J.A.C. 7:7E-1.6(c) for definitions) or left undeveloped for future water dependent uses;

2. On the remaining non-waterfront portion of the site, provision of additional area devoted to water dependent or water-oriented uses may be required as a special case at locations which offer a particularly appropriate combination of natural features and opportunity for waterborne commerce and recreational boating; and

3. On large filled water's edge sites, of about 10 acres or more, where water dependent and water oriented uses can co-exist with other types of development, a greater mix of land uses may be acceptable or even desirable. In these cases, a reduced waterfront portion, i.e., less than that provided by a 100 foot setback, may be acceptable provided that non-water related uses do not adversely affect either access to or use of the waterfront portion of the site.

(d) On filled water's edge sites without direct access to navigable water, the area to be devoted to water related uses will be determined on a case-by-case basis.

(e) On filled water's edge sites with an existing or pre-existing water dependent use, that is, one existing at any time since July 1977, development shall comply with the following additional conditions:

1. For sites with an existing or pre-existing marina, development that would reduce the area currently or recently devoted to the marina is acceptable if:

i. For every two housing units proposed on the Filled Water's Edge the existing number of boat slips in the Marina mooring area (7:7E-3.14) is increased by one and at least 75 percent of the total number of slips (existing and new) remain open to the general public. Removal of uplands to create slips is acceptable;

ii. Marina services are expanded in capacity and upgraded (i.e., modernized) to the maximum extent practicable; and

iii. In-water or off site boat storage capability is demonstrated or upland storage is provided to accommodate at least 75 percent of the marina's boats, as determined by maximum slip capacity, 26 feet in length and longer, and 25 percent of the marina's boats less than 26 feet in length.

2. For sites with an existing or pre-existing water dependent use other than a marina, development that would reduce or adversely affect the area currently or recently devoted to the water dependent use is discouraged.

(f) Along the Hudson River and in other portions of the Northern Waterfront and Delaware River Region, where water dependent uses are demonstrated to be infeasible, some part of the waterfront portion of the site may be acceptable for non-water dependent development under the following conditions:

1. The development proposal addresses, as a minimum, past use of the site as well as potential for future water dependent commercial, transportation, recreation, and compatible maritime support service uses;

2. The developed land uses closest to the water's edge are water-oriented;

3. Currently active maritime port and industrial land uses are preserved;

4. Adverse impacts on local residents and neighborhoods are mitigated to the maximum extent practicable; and

5. All other Coastal Policies, with particular emphasis on water quality and fishing access, are met.

(h) Rationale: See the OAL Note at the beginning of this subchapter.]

## [7:7E-3.17 Existing lagoon edges

(a) "Existing lagoon edges" are defined as existing man-made land areas resulting from the dredging and filling of wetlands, bay bottom and other estuarine water areas for the purpose of creating waterfront lots along lagoons for residential and commercial development.

1. Existing Lagoon Edges extend upland to the limit of fill, or the first paved public road or railroad generally parallel to the water area, whichever is less.

(b) Development of existing lagoon edges is acceptable provided that:

1. The proposed development is compatible with existing adjacent land and water uses;

2. Existing retaining structures are adequate to protect the proposed development, or the retaining structure is reconstructed without extending offshore more than 18 inches; and

3. New retaining structures are consistent with the acceptability conditions for filling (N.J.A.C. 7:7E-4.11(i)).

(c) Rationale: See the OAL Note at the beginning of this subchapter.]

## [7:7E-3.18 Natural water's edge floodplains

(a) "Natural water's edge floodplains" are the flood hazard areas around rivers, creeks and streams as delineated by DEP under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50), or by the Federal Emergency Management Agency (FEMA); or the flood hazard area around other coastal water bodies as defined by FEMA. Floodplains include the areas subject to both tidal and fluvial flooding. Where flood hazard areas have been delineated by both DEP and FEMA, the DEP delineation shall be used. Where flood hazard areas have been delineated by neither DEP nor FEMA, the 10-foot

contour line shall be used as the inland boundary of the floodplain. The seaward boundary shall be the mean high water line.

1. A complete list of streams where DEP has delineated the flood hazard area can be found at N.J.A.C. 7:13-1.11.

2. The United States Army Corps of Engineers has delineated the tidal floodplain for FEMA in most Coastal Zone municipalities. The geographic extent of the tidal flood hazard areas are indicated on USGS topographic maps at a scale of 1:24,000 as "flood prone" areas.

(b) The natural water's edge floodplain standards shall not apply in portions of a floodplain which meet the definition of another special water's edge type (filled water's edge, existing lagoon edge, alluvial flood margins, dunes, overwash fans, erosion hazard areas, island corridor, wetlands, cranberry bogs, wet borrow pit margins, coastal bluffs, intermittent stream corridors).

(c) Development within 100 feet of a navigable water body, unless the use is water dependent. ("Navigable" and "water dependent" are defined at N.J.A.C. 7:7E-1.6(c).)

(d) Development elsewhere in the natural water's edge floodplains is discouraged unless:

1. It has no feasible alternate site outside of a natural water's edge floodplain; and

2. It would not preempt use of the waterfront portion of the floodplain for potential water-dependent use.

(e) Recreational uses, including but not limited to ballfields, tennis courts and golf courses are acceptable provided they do not reduce the flood dissipating value of the floodplain or preclude water dependent use of the area within 100 feet of navigable water.

(f) Development must be consistent with all other coastal policies, in particular the performance standards found in the Flood Hazard Area Resource Policy (N.J.A.C. 7:7E-8.22).

(g) Detention basins are prohibited in river floodplains.

(h) Rationale: See the OAL Note at the beginning of this subchapter.]

#### [7:7E-3.19 Alluvial flood margins

(a) "Alluvial flood margins" are mainland areas adjacent to, and upland from, floodplains. They extend inland to the limit of alluvial soils with a seasonal high water table equal to, or less than, one foot.

1. Alluvial soils are those developing in recent sediment deposited by surface water and exhibiting essentially no modification of the deposited materials.

2. Where an alluvial flood margin is also an intermittent stream corridor, only the Intermittent Stream Corridor Policies (N.J.A.C. 7:7E-3.27) shall apply.

(b) Wildlife refuge and low intensity recreational use is encouraged.

(c) Development is discouraged in alluvial flood margins unless no feasible alternative site exists, or it is a landward extension of a water-dependent use.

(d) Rationale: See the OAL Note at the beginning of this subchapter.]

#### [7:7E-3.20 Beaches

(a) "Beaches" are gently sloping unvegetated areas of sand or other unconsolidated material that extend landward from the mean high water line to either:

1. The vegetation line;

2. A man-made feature generally parallel to the ocean, inlet, or bay waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except that sandy areas that extend fully under and landward of an elevated boardwalk are considered to be beach areas; or

3. The seaward or bayward foot of dunes, whichever is closest to the bay, inlet or ocean waters.

(b) Beaches can be found on all tidal shorelines, including ocean, bay and river shorelines.

(c) Development is prohibited on beaches, except for development that has no prudent or feasible alternative in an area other than a beach, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either

individually or in combination with other existing or proposed structures, land disturbances, or activities. Examples of acceptable activities are:

1. Demolition and removal of paving and structures;

2. Dune creation and related sand fencing and planting of vegetation for dune stabilization;

3. The reconstruction of existing amusement and fishing piers and boardwalks;

4. Temporary recreation structures for public safety such as first aid and lifeguard stations;

5. Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(e); and

6. Linear development which meets the Policy on Location of Linear Development (N.J.A.C. 7:7E-6.1).

(d) Public access and barrier free access to beaches and the water's edge is encouraged. Coastal development that unreasonably restricts public access is prohibited.

(e) Rationale: See the OAL Note at the beginning of this subchapter.]

#### [7:7E-3.21 Dunes

(a) A "dune" is a wind or wave deposited or man-made formation of vegetated or drifting windblown sand that lies generally parallel to and landward of the beach, and between the upland limit of the beach and the foot of the most inland dune slope. "Dune" includes the foredune, secondary and tertiary dune ridges, as well as man-made dunes, where they exist.

1. Formations of sand immediately adjacent to beaches that are stabilized by retaining structures, or snow fences, planted vegetation, and other measures are considered to be dunes regardless of the degree of modification of the dune by wind or wave action or disturbance by development.

2. A small mound of loose, wind blown sand found in a street or on a part of a structure as a result of storm activity is not considered to be a "dune".

(b) Development is prohibited on dunes, except for development that has no prudent or feasible alternative in an area other than a dune, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:

1. Demolition and removal of paving structures;

2. Limited, designated access ways for pedestrian and authorized motor vehicles between public streets and the beach that provide for the minimum feasible interference with the beach and dune system and are oriented so as to provide the minimum feasible threat of breaching or overtopping as a result of storm surge or wave runup;

3. Limited stairs, walkways, pathways and boardwalks to permit access across dunes to beaches, provided they cause minimum feasible interference with the beach and dune system;

4. The planting of native vegetation to stabilize dunes;

5. Sand fencing, either a brush type barricade or a picket type, to accumulate sand and aid in dune formation;

6. Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(e); and

7. Linear development which meets the Policy on Location of Linear Development (N.J.A.C. 7:7E-6.1).

(c) Rationale: See the OAL Note at the beginning of this subchapter.]

#### [7:7E-3.22 Overwash fans

(a) An "overwash fan" is a gently sloping, conical accumulation of sediment, usually sand, that is deposited landward of the beach or dune by the rush of water up onto the beach, following the breaking of a wave, which carries sediment over the crest of a beach berm, a dune or a structure. An overwash fan may, through stabilization and vegetation, become a dune.

1. The seaward limit of the overwash fan is the seaward toe of the former dune, or the landward limit of the beach, in the absence of a dune.

2. The landwash limit of overwash is the inland limit of sediment transport.

3. Verifiable aerial photography and other appropriate sources may be used to identify the extent of overwash.

(b) Development is prohibited on overwash fans, except for development that has no prudent or feasible alternative in an area other than an overwash fan, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:

1. Creation of dunes or expansion of existing dunes;
2. Demolition and removal of paving and structures;
3. Limited, designated access ways for pedestrians and authorized motor vehicles between public streets and the beach that provide for the minimum feasible interference with the beach and dune system and are so oriented as to provide the minimum feasible threat of breaching or overtopping as a result of storm surge or wave runup;
4. Limited stairs, walkways, pathways and boardwalks to permit access across dunes to beaches, provided they cause minimum feasible interference with the beach and dune system;
5. The planting of native vegetation to facilitate dune development;
6. Sand fencing, either a brush type barricade or a picket type, to accumulate sand and aid in dune formation;
7. Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(e);
8. Linear development which meets the Policy on Location of Linear Development (N.J.A.C. 7:7E-6.1); and
9. Removal of newly deposited overwash fans from public roads or developed lots.

(c) A development may be permitted if, by creating a dune with buffer zone or expanding an existing dune landward, the classification of the site is changed so as to significantly diminish the possibility of future overwash. On non-oceanfront lots where this is not feasible, mitigation may take the form of creation or enhancement of adjacent street end dunes including appropriately designed walk over structures.

(d) Rationale: See the OAL Note at the beginning of this subchapter.]

#### [7:7E-3.23 Erosion hazard areas

(a) "Erosion hazard areas" are shoreline areas that are eroding and/or have a history of erosion, causing them to be highly susceptible to further erosion and damage from storms.

1. Erosion hazard areas may be identified by any one of the following characteristics:

- i. Lack of beaches;
- ii. Lack of beaches at high tide;
- iii. Narrow beaches;
- iv. High beach mobility;
- v. Foreshore extended under a boardwalk;
- vi. Low dunes or no dunes;
- vii. Escarped foredune;
- viii. Gaps in dune fields;
- ix. Steep beach slopes;
- x. Clifed bluffs adjacent to beach;
- xi. Insufficient dune or bluff vegetation;
- xii. Exposed, damaged or breached jetties, groins or seawalls;
- xiii. High long-term erosion rates; or
- xiv. Pronounced downdrift effects of groins (jetties).

2. Erosion hazard areas extend inland to the limit of the area likely to be eroded in less than 50 years, including developed and undeveloped areas.

(b) Development is prohibited in erosion hazard areas, except for:

1. Linear development which meets the Policy on Location of Linear Development (N.J.A.C. 7:7E-6.1); and
2. Shore protection activities which meet the appropriate Coastal Engineering Use Policies (N.J.A.C. 7:7E-7.11).

(c) Rationale: See the OAL Note at the beginning of this subchapter.]

#### [7:7E-3.24 Island corridor

(a) "Island corridors" are the interior portions of oceanfront barrier islands, spits, peninsulas and bay islands.

1. The oceanfront barrier island corridor encompasses that portion of barrier islands, spits and peninsulas (narrow land areas surrounded by both bay and ocean waters and connected to the mainland) that lies upland of wetlands, beach and dune systems filled water's edges, and existing lagoon edges. Island corridor does not apply to the headlands of northern Ocean County, Monmouth County, and the tip of Cape May County, which are part of the mainland.

2. The bay island corridor is composed of non-oceanfront islands surrounded by tidal waters.

3. The bay island corridor is that portion lying upland of wetlands and beaches but including the filled water's edge. The more restrictive provisions of the island corridor and filled water's edge shall apply (N.J.A.C. 7:7E-3.16).

(b) New or expanded development within the oceanfront barrier island corridor is conditionally acceptable provided that the criteria for High Development Potential are met, as defined in the policy for Land Areas (see N.J.A.C. 7:7E-5.5) and maximum acceptable intensities for development under the Land Area Policies are not exceeded.

(c) Water dependent development is discouraged on bay island corridors which do not abut a paved public road and not served by a sewerage system with adequate capacity. All other types of development are prohibited in these areas.

(d) On bay island corridors which abut a paved public road and sewerage system with adequate capacity, water dependent development is acceptable and all other development is acceptable only at a low intensity (three to five percent of the bay island corridor (upland areas) may be covered with impervious surfaces).

(e) Rationale: See the OAL Note at the beginning of this subchapter.]

#### 7:7E-3.16 Dunes

(a) A "dune" is a wind or wave deposited or man-made formation of vegetated or drifting windblown sand that lies generally parallel to and landward of the beach, and between the upland limit of the beach and the foot of the most inland dune slope. "Dune" includes the fore-dune, secondary and tertiary dune ridges, as well as man-made dunes, where they exist.

1. Formations of sand immediately adjacent to beaches that are stabilized by retaining structures, or snow fences, planted vegetation, and other measures are considered to be dunes regardless of the degree of modification of the dune by wind or wave action or disturbance by development.

2. A small mound of loose, windblown sand found in a street or on a part of a structure as a result of storm activity is not considered to be a "dune".

(b) Development is prohibited on dunes, except for development that has no prudent or feasible alternative in an area other than a dune, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are;

1. Demolition and removal of paving structures;
2. Limited, designated access ways for pedestrian and authorized motor vehicles between public streets and the beach that provide for the minimum feasible interference with the beach and dune system and are oriented so as to provide the minimum feasible threat of breaching or overtopping as a result of storm surge or wave runup;
3. Limited stairs, walkways, pathways and boardwalks to permit access across dunes to beaches, provided they cause minimum feasible interference with the beach and dune system;
4. The planting of native vegetation to stabilize dunes;
5. Sand fencing, either a brush type barricade or a picket type, to accumulate sand and aid in dune formation;
6. Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(e); and
7. Linear development which meets the Policy on Location of Linear Development (N.J.A.C. 7:7E-6.1).

(c) Rationale: See the OAL Note at the beginning of this subchapter.]

**7:7E-3.17 Overwash Areas**

(a) An "Overwash Area" is an area subject to accumulation of sand that is deposited landward of the beach or dune by the rush of water up onto the beach, following the breaking of a wave, which carries sediment over the crest of a beach berm, a dune or a structure. An overwash fan may, through stabilization and vegetation, become a dune.

1. The seaward limit of the Overwash Area is the seaward toe of the former dune, or the landward limit of the beach, in the absence of a dune.

2. The landward limit of the Overwash Area is the inland limit of sediment transport.

3. Verifiable aerial photography and other appropriate sources may be used to identify the extent of overwash.

(b) Development is prohibited in Overwash Areas except for development that has no prudent or feasible alternative in an area other than an Overwash Area, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:

1. Creation of dunes or expansion of existing dunes;

2. Demolition and removal of paving and structures;

3. Limited, designated access ways for pedestrians and authorized motor vehicles between public streets and the beach that provide for the minimum feasible interference with the beach and dune system and are so oriented as to provide the minimum feasible threat of breaching or overtopping as a result of storm surge or wave runup;

4. Limited stairs, walkways, pathways and boardwalks to permit access across dunes to beaches, provided they cause minimum feasible interference with the beach and dune system;

5. The planting of native vegetation to facilitate dune development;

6. Sand fencing, either a brush type barricade or a picket type, to accumulate sand and aid in dune formation;

7. Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(e);

8. Linear development which meets the Policy on Location of Linear Development (N.J.A.C. 7:7E-6.1); and

9. Removal of newly deposited overwash fans from public roads or developed lots.

(c) A development may be permitted if, by creating a dune with buffer zone or expanding an existing dune landward, the classification of the site is changed so as to significantly diminish the possibility of future overwash. On non-oceanfront lots where this is not feasible, mitigation may take the form of creation or enhancement of adjacent street end dunes, including the construction of appropriately designed walk over structures.

(d) A single story, beach/tourism oriented commercial facility located within an already developed municipal boardwalk/commercial area of Point Pleasant Beach, Seaside Heights, Ocean City, North Wildwood and Wildwood City is acceptable provided that it meets the following conditions:

1. The site is located within an area currently used for beach related commercial use and is landward of the boardwalk;

2. The height of the building does not exceed 15 feet measured from either the elevation of the existing ground or the boardwalk (depending on the specific site conditions) to the top of a flat roof or the mid-point of a sloped roof;

3. The facility is open to the general public and supports beach/tourism related activities, that is, retail, amusement and food services. Lodging facilities are excluded; and

4. The facility meets all the flood proofing requirements at N.J.A.C. 7:7E-3.25, Flood Hazard Areas.

(e) Rationale: See the OAL Note at the beginning of this subchapter.

**7:7E-3.18 Coastal High Hazard Areas**

(a) "Coastal High Hazard Areas" are flood prone areas subject to high velocity waters (or V zones), as delineated on the Flood Insurance Rate Maps (FIRM) prepared by FEMA, and areas subject to wave run-up and overtopping of shore protection structures parallel to the shoreline.

(b) Residential development, including, but not limited to, hotels and motels, is prohibited in Coastal High Hazard Areas, except for single

family and duplex infill developments which are conditionally acceptable provided that the standards of N.J.A.C. 7:7E-7.2(f) are met.

(c) In general, commercial development is discouraged in the Coastal High Hazard Areas. Beach use related commercial development in Coastal High Hazard Areas which is conditionally acceptable within areas that are already densely developed, provided that:

1. The site is landward of the boardwalk;

2. The height of the building does not exceed 15 feet measured from either the elevation of the existing ground or the boardwalk (depending on the specific site conditions) to the top of a flat roof or the mid-point of a sloped roof;

3. The facility is open to the general public and supports beach/tourism related activities only, that is, retail, amusement and food services. Lodging facilities are excluded; and

4. The facility complies with all the flood proofing requirements at N.J.A.C. 7:7E-3.25, Flood Hazard Areas.

(d) All permanent structures shall be set back a minimum of 25 feet from oceanfront shore protection structures, typically including bulkheads, revetments and seawalls and occasionally jetties and groins if constructed at inlets. This condition is applicable only to shore protection structures that are of sufficient height and strength to provide resistance to storm waves.

**7:7E-3.19 Erosion Hazard Areas**

(a) "Erosion Hazard Areas" are shoreline areas that are eroding and/or have a history of erosion, causing them to be highly susceptible to further erosion and damage from storms.

1. Erosion Hazard Areas may be identified by any one of the following characteristics:

i. Lack of beaches;

ii. Lack of beaches at high tide;

iii. Narrow beaches;

iv. High beach mobility;

v. Foreshore extended under a boardwalk;

vi. Low dunes or no dunes;

vii. Escarped foredune;

viii. Steep beach slopes;

ix. Clifed bluffs adjacent to beach;

x. Exposed, damaged or breached jetties, groins, bulkheads or seawalls;

xi. High long-term erosion rates; or

xii. Pronounced downdrift effects of groins (jetties).

2. Erosion Hazard Areas extend inland from the edge of a stabilized upland area to the limit of the area likely to be eroded in 30 years, for one to four unit dwelling structures, and 60 years, for all other structures including developed and undeveloped areas. This distance is measured from the crest of a bluff for coastal bluff areas; from the most seaward established dune crest for unvegetated dune areas; from the first vegetation line from the water for established vegetated dune areas; and from the landward edge of a beach or the eight-foot National Geodetic Vertical Datum (NGVD) contour line, whichever is farther inland, for non-dune areas.

i. An established, unvegetated dune is a dune that has been in place for at least two winter seasons or has been constructed pursuant to a Waterfront Development Permit or a CAFRA Permit or with financial assistance from the Department.

ii. An established vegetated dune is a dune with an existing vegetative cover which has been growing on site for at least two growing seasons.

3. The extent of an Erosion Hazard Area is calculated by multiplying the projected annual erosion rate at a site by 30.

(b) Development is prohibited in Erosion Hazard Areas except for:

1. Linear development which meets the Policy on Location of Linear Development (N.J.A.C. 7:7E-6.1);

2. Shore protection activities which meet the appropriate Coastal Engineering Use Policies (N.J.A.C. 7:7E-7.11);

3. Single story, beach/tourism oriented commercial development located within an already developed municipal boardwalk/commercial area of Point Pleasant Beach, Seaside Heights, Ocean City, North Wildwood and Wildwood City. Such development is acceptable provided that it meets the following conditions:

i. The site is located within an area currently used for beach related commercial use and is landward of the boardwalk;

ii. The height of the building does not exceed 15 feet measured from either the elevation of the existing ground or the boardwalk (depending on the specific site conditions) to the top of a flat roof or the mid-point of a sloped roof;

iii. The facility is open to the general public and supports beach/tourism related recreational activities, that is, retail, amusement and food services. Lodging facilities are excluded; and

iv. The facility meets all the flood proofing requirements of the Flood Hazard Area policy; and

4. Single family and duplex infill developments that meet the standards of N.J.A.C. 7:7E-7.2(f).

(c) Rationale: See the OAL Note at the beginning of this subchapter.

(Agency note: N.J.A.C. 7:7E-3.20 and 3.21 belong to the Barrier and Bay Islands subcategory.)

#### 7:7E-3.20 Barrier Island Corridor

(a) "Barrier Island Corridors" are the interior portions of oceanfront barrier islands, spits and peninsulas.

1. The oceanfront barrier island corridor encompasses that portion of barrier islands, spits and peninsulas (narrow land areas surrounded by both bay and ocean waters and connected to the mainland) that lies upland of wetlands, beach and dune systems, filled water's edges, and existing lagoon edges. Barrier Island Corridor does not include the headlands of northern Ocean County, Monmouth County, and the southern tip of Cape May County, which are part of the mainland.

(b) New or expanded development within the oceanfront barrier island corridor is conditionally acceptable provided that the criteria for High Development Potential are met, as defined in the policy for Land Areas (see N.J.A.C. 7:7E-5.5) and maximum acceptable intensities for development under the Land Area Policies are not exceeded.

(c) Rationale: See the OAL Note at the beginning of this subchapter.

#### 7:7E-3.21 Bay Islands

(a) Bay Islands are islands or filled areas surrounded by tidal waters, wetlands, beaches or dunes, lying between the mainland and barrier islands.

1. In cases where a Bay Island is also a Filled Water's Edge (N.J.A.C. 7:7E-3.23), the more restrictive provisions of the two rules shall apply.

(b) On Bay Island sites which do not abut a paved public road and/or are not served by a sewerage system with adequate capacity, non-water dependent development is prohibited and water dependent development is discouraged. Water dependent development may be acceptable if there are no feasible alternatives and environmental impacts are minimized.

(c) On Bay Island sites which abut a paved public road and sewerage system with adequate capacity, water dependent development is conditionally acceptable, provided all other applicable Coastal Zone Management Policies are complied with. New non-water dependent development is acceptable only at Low Intensity Development as defined at N.J.A.C. 7:7E-3.6(d) except for Existing Lagoon Edges (N.J.A.C. 7:7E-3.24) where the acceptable intensity of development may be increased to a Moderate Intensity Development as defined in N.J.A.C. 7:7E-5.6(c).

(d) Redevelopment or modification of an existing above ground facility is conditionally acceptable subject to the following provisions:

1. The facility does not exceed the existing development density as to the following:

- i. Number of units;
- ii. Square footage of interior floor space; or
- iii. Square footage of habitable floor space; and

2. The site development does not exceed either 80 percent impervious coverage of the site or the existing intensity of development, that is, existing, percent of impervious surface cover, whichever is less.

#### 7:7E-3.22 Beaches

(a) "Beaches" are gently sloping unvegetated areas of sand or other unconsolidated material that extend landward from the mean high water line to either:

1. The vegetation line;

2. A man-made feature generally parallel to the ocean, inlet, or bay waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except that sandy areas that extend fully under and landward of an elevated boardwalk are considered to be beach areas; or

3. The seaward or bayward foot of dunes, whichever is closest to the bay, inlet or ocean waters.

(b) Beaches can be found on all tidal shorelines, including ocean, bay and river shorelines.

(c) Development is prohibited on beaches, except for development that has no prudent or feasible alternative in an area other than a beach, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:

1. Demolition and removal of paving and structures;
2. Dune creation and related sand fencing and planting of vegetation for dune stabilization;
3. The reconstruction of existing amusement and fishing piers and boardwalks;

4. Temporary recreation structures for public safety such as first aid and lifeguard stations;

5. Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(e); and

6. Linear development which meets the Policy on Location of Linear Development (N.J.A.C. 7:7E-6.1).

(d) Public access and barrier free access to beaches and the water's edge is encouraged. Coastal development that unreasonably restricts public access is prohibited.

(e) Rationale: See the OAL Note at the beginning of this subchapter.

(Agency Note: N.J.A.C. 7:7E-3.16 through 3.32 are Special Waters Edge Areas. Within these sections, N.J.A.C. 7:7E-3.16 through 3.19 belong to the Oceanfront, and Raritan and Delaware Bayfronts subcategory.)

#### 7:7E-3.23 Filled Water's Edge

(a) "Filled Water's Edge" areas are existing filled areas lying between wetlands or water areas, and either the upland limit of fill, or the first paved public road or railroad landward of the adjacent water area, whichever is closer to the water. Some existing or former dredge spoil disposal sites and excavation fill areas are Filled Water's Edge.

(b) The "waterfront portion" is defined as a contiguous area at least equal in size to the area within 100 feet of navigable water, measured from the Mean High Water Line (MHWL). This contiguous area must be accessible to a public road and occupy at least 30 percent of the navigable water's edge.

(c) On Filled Water's Edge sites with direct water access (that is, those sites without extensive Intertidal Shallows or Wetlands between the upland and navigable water), development shall comply with the following conditions:

1. The waterfront portion of the site shall be developed with a water dependent use (see N.J.A.C. 7:7E-1.5(c) for definitions) or left undeveloped for future water dependent uses;

2. On the remaining non-waterfront portion of the site, provision of additional area devoted to water dependent or water-oriented uses may be required as a special case at locations which offer a particularly appropriate combination of natural features and opportunity for water-borne commerce and recreational boating; and

3. On large Filled Water's Edge sites, of 10 or more upland acres, where water dependent and water oriented uses can co-exist with other types of development, a greater mix of land uses may be acceptable or even desirable. In these cases, a reduced waterfront portion, that is, less than that provided by a 100 foot setback, may be acceptable provided that non-water related uses do not adversely affect either access to or use of the waterfront portion of the site.

(d) On Filled Water's Edge sites without direct access to navigable water, the area to be devoted to water related uses will be determined on a case-by-case basis.

(e) On Filled Water's Edge sites with an existing or pre-existing water dependent use, that is, one existing at any time since July 1977, development shall comply with the following additional conditions:

1. For sites with an existing or pre-existing marina, development that would reduce the area currently or recently devoted to the marina is acceptable if:

i. For every two housing units proposed on the Filled Water's Edge the existing number of boat slips in the Marina mooring area (7:7E-3.14) is increased by one and at least 75 percent of the total number of slips (existing and new) remain open to the general public. Removal of uplands to create slips is acceptable;

ii. Marina services are expanded in capacity and upgraded (i.e., modernized) to the maximum extent practicable; and

iii. In-water or off site boat storage capability is demonstrated or upland storage is provided to accommodate at least 75 percent of the marina's boats, as determined by maximum slip capacity, 26 feet in length and longer, and 25 percent of the marina's boats less than 26 feet in length.

2. For sites with an existing or pre-existing water dependent use other than a marina, development that would reduce or adversely affect the area currently or recently devoted to the water dependent use is discouraged.

(f) Along the Hudson River and in other portions of the Northern Waterfront and Delaware River Region, where the proposed water dependent use is a public walkway, the walkway right-of-way shall be at least 30 feet wide, unless there are existing onsite physical constraints which cannot be removed or altered to meet this requirement.

(g) The intensity of a development shall not exceed the maximum allowed under N.J.A.C. 7:7E-9.3 acceptability of development in General Land Areas.

(h) Along the Hudson River and in other portions of the Northern Waterfront and Delaware River Region, where water dependent uses are demonstrated to be infeasible, some part of the waterfront portion of the site may be acceptable for non-water dependent development under the following conditions:

1. The development proposal addresses, as a minimum, past use of the site as well as potential for future water dependent commercial, transportation, recreation, and compatible maritime support service uses;

2. The developed land uses closest to the water's edge are water-oriented;

3. Currently active maritime port and industrial land uses are preserved;

4. Adverse impacts on local residents and neighborhoods are mitigated to the maximum extent practicable; and

5. All other Coastal Policies, with particular emphasis on water quality and fishing access, are met.

(i) Rationale: See the OAL Note at the beginning of this subchapter.

#### 7:7E-3.24 Existing Lagoon Edges

(a) "Existing Lagoon Edges" are defined as existing man-made land areas resulting from the dredging and filling of wetlands, bay bottom and other estuarine water areas for the purpose of creating waterfront lots along lagoons for residential and commercial development.

1. Existing Lagoon Edges extend upland to the limit of fill, or the first paved public road or railroad generally parallel to the water area, whichever is less.

(b) Development of Existing Lagoon Edges is acceptable provided that:

1. The proposed development is compatible with existing adjacent land and water uses;

2. Existing retaining structures are adequate to protect the proposed development;

3. New or reconstructed retaining structures are consistent with the Acceptability Conditions for Filling (N.J.A.C. 7:7E-4.11(i)) 7:7E-4.11(j)) and Structural Shore Protection (N.J.A.C. 7:7E-7.11(e)) policies; and

4. The intensity of a development does not exceed the maximum allowed under the Acceptability of Development in General Land Areas Policy (N.J.A.C. 7:7E-5.2).

(c) Rationale: See the OAL Note at the beginning of this subchapter.

#### 7:7E-3.25 Flood Hazard Areas

(a) "Flood Hazard Areas" are the floodway and floodplain around rivers, creeks and streams as delineated by DEP under the Flood

Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.), or by the Federal Emergency Management Agency (FEMA); or the Flood Hazard Area around other coastal water bodies as defined by FEMA. Flood Hazard Areas are areas subject to either tidal or fluvial flooding. Where Flood Hazard Areas have been delineated by both DEP and FEMA, the DEP delineations shall be used. Where Flood Hazard Areas have not been delineated by DEP or FEMA, limits of the 100-year floodplain will be established by computation on a case-by-case basis. The seaward boundary shall be the mean high water line.

1. A complete list of streams for which the Department has delineated the Flood Hazard Area can be found at N.J.A.C. 7:13.

2. The Federal Emergency Management Agency has delineated the tidal floodplain for all Coastal Zone municipalities.

3. Where portions of Flood Hazard Areas meet the definition of another Special Water's Edge type (Filled Water's Edge, Existing Lagoon Edge, Alluvial Flood Margins, Beaches, Dunes, Overwash Areas, Erosion Hazard Areas, Coastal High Hazard Areas, Barrier Island Corridor, Bay Islands, Wetlands, Wetlands Buffer, Cranberry Bogs, Wet Borrow Pit Margins, Coastal Bluffs, and Intermittent Stream Corridors), the relevant Special Water's Edge policies shall apply in terms of location acceptability and Flood Hazard Areas policy shall apply in terms of setback and floodproofing requirements.

(b) Dedication of undeveloped Flood Hazard Areas for purposes of public open space is encouraged, especially where such areas are part of a regional greenway system such as those designated under the New Jersey Wild and Scenic Rivers System (see N.J.S.A. 13:8-45 et seq.).

(c) In undeveloped Flood Hazard Areas, development within 100 feet of a navigable water body is prohibited, unless the development is for water dependent use or low intensity use which does not reduce the flood dissipating value of the Flood Hazard Area or preclude water dependent use of the area. ("Navigable" and "water dependent" are defined at N.J.A.C. 7:7E-1.6(c).)

(d) Elsewhere in the undeveloped portions of Flood Hazard Areas, development is conditionally acceptable provided that:

1. The acceptable intensity of development does not exceed the maximum allowed under acceptability of development in General Land Areas (N.J.A.C. 7:7E-5.2) for sites that receive a Low Intensity Rating and does not exceed Moderate Intensity level for all other sites. Low and Moderate Acceptable Development Intensities are defined in N.J.A.C. 7:7E-5.6(c) and (d) (that is, up to three to five percent of the site for low or 30 percent to 40 percent of the site for moderate can be developed into paving and structures); and

2. It would not preempt use of the waterfront portion of the floodplain for potential water-dependent use.

(e) In general, detention and retention basins are prohibited in Flood Hazard Areas. However, retention and detention basins developed specifically for storm water management purposes are conditionally acceptable provided they are constructed in accordance with criteria of the State Stormwater Management Regulations (N.J.A.C. 7:8).

(f) Development in areas subject to fluvial flooding shall conform with the Flood Hazard Area Control Act and rules adopted pursuant thereto. Development in areas subject to tidal flooding shall conform with applicable federal flood hazard reduction standards as found at 44 C.F.R. Part 60 and in the Uniform Construction Code, N.J.S.A. 52:27D-1 et seq.

(g) In developed areas, the intensity of a development shall not exceed the maximum allowed under the acceptability of development in the General Land Areas Policy (N.J.A.C. 7:7E-5.2).

(h) Rationale: See the OAL Note at the beginning of this subchapter.

#### 7:7E-3.26 Alluvial Flood Margins

(a) "Alluvial Flood Margins" are mainland areas adjacent to, and upland from, floodplains. They extend inland to the limit of alluvial soils with a seasonal high water table equal to, or less than, one foot.

1. Alluvial soils are those developing in recent sediment deposited by surface water and exhibiting essentially no modification of the deposited materials.

2. Where an alluvial flood margin is also an intermittent stream corridor, only the Intermittent Stream Corridor Policies (N.J.A.C. 7:7E-3.27) shall apply.

(b) Wildlife refuge and low intensity recreational use is encouraged.

(c) Development is discouraged in alluvial flood margins unless no feasible alternative site exists, or it is a landward extension of a water-dependent use.

(d) Rationale: See the OAL Note at the beginning of this subchapter. (Agency note: N.J.A.C. 7:7E-3.22 through 3.32 belong to the Coastwide subcategory.)

[7:7E-3.25] 7:7E-3.27 Wetlands

[(a) "Wetlands" are areas regulated under the Wetlands Act of 1970 (N.J.A.C. 13:9A-1 et seq.). They are delineated at a scale of 1:2,400 on official maps as listed at N.J.A.C. 7:7A-1.13. All coastal wetlands situated in the Raritan Basin, south along the Atlantic Ocean and north along Delaware Bay and River are subject to the Wetlands Act.]

[1.](a) "Wetlands" [are also areas where the substrate] or "Wetland" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances [do] does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. [(Lands subject to wetlands regulations are designated by wetlands maps found at N.J.A.C. 7:7-2.2.)]

1. Wetlands are regulated pursuant to the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) or the Freshwater Wetlands Protection Act of 1987 (N.J.S.A. 13:9B-1 et seq.). In addition, projects in Wetlands that are exempt from the Freshwater Wetlands Protection Act may be regulated pursuant to other programs within the jurisdiction of the Department.

[2. Under CAFRA, the Department regulates freshwater wetlands and forested wetlands such as white cedar stands, hardwood swamps, and other lowland forest types on sites proposed for the major developments requiring a CAFRA permit.

i. Generalized location maps of white cedar stands and other forested wetlands can be found in J. McCormick and L. Jones. The Pine Barrens Vegetation (1973), and forest type maps within the Department's Bureau of Forestry, and, in some areas, in the vegetation maps prepared by the New Jersey Pinelands Commission for the Comprehensive Management Plan.

3. The Waterfront Development Law regulates all wetlands north of the Raritan Basin, except for areas within the Hackensack Meadowlands District not now or formerly flowed by the tides, and all coastal wetlands in the Delaware River Basin and Raritan River Basin not regulated under the Wetlands Act.]

2. All coastal Wetlands situated in the Raritan Basin, south along the Atlantic Ocean and north along Delaware Bay and River and delineated at a scale of 1:2,400 on official maps as listed under N.J.A.C. 7:7-2.2 are subject to the Wetlands Act of 1970.

3. All coastal and inland Wetlands are subject to the Freshwater Wetlands Protection Act of 1987, unless the Wetland is located within the boundary of coastal Wetlands delineated on the official maps cited under (a)2 above or is located within the jurisdiction of the Hackensack Meadowlands Commission or the Pinelands Commission.

4. Generalized locations of both coastal and inland [wetlands] Wetlands can be found at a scale of 1:24,000 on maps produced for the National Wetlands Inventory by the United States Fish and Wildlife Service.

i. (No change.)

ii. These maps shall be used only as an indicator to assist in the preliminary determination of the presence or absence of Wetlands.

5. All coastal and inland Wetlands, excluding the delineated tidal wetlands promulgated pursuant to N.J.A.C. 7:7-2.2, shall be identified and delineated in accordance with the USEPA three-parameter approach (i.e., hydrology, soils and vegetation) specified under N.J.A.C. 7:7A-1.4 of the Freshwater Wetlands Protection Act Rules.

(b) In general, development of all kinds is prohibited in [wetlands] Wetlands, unless the Department can find that the proposed development meets the following four conditions (see also N.J.A.C. [7:7A-1.5 and 1.7] 7:7-2.2):

1. Requires water access or is water-oriented as a central purpose of the basic function of the activity (this policy applies only to development proposed on or adjacent to waterways). This means that

the use must be water dependent as defined in N.J.A.C. [7:7E-2.2] 7:7E-1.5.

2.-4. (No change.)

(c) In addition, development in Wetlands regulated under the Freshwater Wetlands Protection Act of 1987 is prohibited, unless the development is found to be acceptable under the Freshwater Wetlands Protection Act Rules. N.J.A.C. 7:7A.

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

[(d) If destruction of a wetlands takes place, mitigation shall be carried out consistent with N.J.A.C. 7:7E-1.6.]

(e)-(g) (No change.)

(h) If an application to disturb or destroy Wetlands meets the standards for permit approval, the Department will require the applicant to mitigate for the loss or degradation of the Wetlands in accordance with the following:

1. When a permit allows the disturbance or loss of Wetlands (see N.J.A.C. 7:7E-3.25) by filling or other means, this disturbance or loss shall be compensated for as specified under (h)6 below unless the applicant can prove through the use of productivity models or other similar studies, that by restoring or creating a lesser area, there will be replacement of Wetlands of equal ecological value.

2. Mitigation shall be performed prior to or concurrent with activities that will permanently disturb Wetlands and immediately after activities that will temporarily disturb these habitats.

3. Where the Department permits mitigation surface area on a basis of less than a 2:1, monitoring by the permittee at a frequency determined by the Department to be appropriate on a case-by-case basis shall be required. In such cases, additional mitigation or further remedial action shall be required at a level and within the forms determined to be appropriate on a case-by-case basis by the Department when the Department determines that a net loss of equal ecological value occurs. Under no circumstances shall the mitigation area be smaller than the disturbed area. Creation of Wetlands from existing natural resources protected under the applicable Special Area Policies (N.J.A.C. 7:7E-3) is not an acceptable form of mitigation, nor is transfer of title of existing wetlands or intertidal or subtidal shallows to a government agency or conservation organization.

4. The Department will not consider a mitigation proposal in determining whether a project should be awarded a permit, but will require mitigation as a condition of any permit found to be acceptable under the criteria listed in N.J.A.C. 7:7A-3 and/or N.J.A.C. 7:7E-3.15 and 3.27.

5. Future development on the mitigation site is prohibited.

6. The Department distinguishes between four types of mitigation: restoration, creation, enhancement, and contribution. Depending on the circumstances under which wetlands are lost or disturbed, different types of mitigation may be required by the Department. The types of mitigation are explained below, in decreasing order of their desirability:

i. Restoration refers to actions performed on the site of a regulated activity, within six months of the commencement of the regulated activity, in order to reverse or remedy the effects of the activity on the wetland and to restore the site to preactivity condition.

(1) Restoration shall be required at a ratio of one acre restored to one acre lost or disturbed. If restoration actions are performed more than six months after the commencement of the regulated activity which disturbed the wetland, these actions will no longer be considered restoration, but will be considered creation, and will be governed by the provisions of (h)6ii(2) below.

(2) If restoration actions are performed on degraded wetlands offsite, these actions will be considered enhancement and will be governed by the provisions of (h)6ii(3) below.

ii. Creation refers to actions performed to establish wetland characteristics, habitat and functions on:

(1) A non-wetlands site; or

(2) A former Wetlands site which has been filled or otherwise disturbed such that it no longer retains wetland characteristics. If the site retains Wetlands characteristics such that it meets the definition of a degraded Wetland pursuant to N.J.A.C. 7:7A-1.4, it is not eligible for use in creation. Rather, it is only eligible for enhancement activities pursuant to (h)6iii, below. If the disturbance to a formerly Wetlands site is the result of a violation of the Freshwater Wetlands Protection Act and/or the Wetlands Act of 1970, the Department may, at its

discretion, condition an approval of a mitigation plan, or a permit, or both, on the resolution of the violation.

(3) Creation will be required at a ratio of two acres created to one acre lost or disturbed.

iii. Enhancement refers to actions performed to improve the characteristics, habitat and functions of an existing, degraded Wetland such that the enhanced wetland will have resource values and functions similar to an undisturbed wetland. Enhancement will be required at a ratio of seven acres enhanced to one acre lost or disturbed.

iv. Contribution refers to the donation of money or land. The Department will permit the donation of land only after determining that all alternatives to the donation are not practicable or feasible. This determination will be made in consultation with the United States Environmental Protection Agency (USEPA) for freshwater Wetlands. If money is donated, the Department will require an amount equivalent to:

(1) The cost of purchasing an area which was historically a wetland but which has been legally filled, and restoring that area to a functional wetland of equal ecological value to those which are being lost; or

(2) The cost of purchasing an area which was historically an upland, and creating and preparing wetlands of equal ecological value to those which are being lost.

v. If the Department determines that land may be donated as part or all of a contribution to mitigate for the destruction of freshwater wetlands, the Wetlands Mitigation Council must first determine that the donated land has the potential to be a valuable component of the freshwater wetlands ecosystem.

7. All mitigation projects shall be carried out on-site to the maximum extent practicable.

8. If on-site mitigation is found to be impracticable, off-site mitigation shall be considered and implemented within the same watershed or estuary if feasible.

[7:7E-3.26] 7:7E-3.28 Wetlands [buffers] **Buffers**

[(a)] All land within 300 feet of wetlands as defined in N.J.A.C. 7:7E-3.26 and within the drainage area of those wetlands comprises an area within which the need for a "wetlands buffer" shall be determined.]

(a) "Wetlands Buffer or transition area" means an area of land adjacent to a Wetland which minimizes adverse impacts on the Wetlands and serves as an integral component of the Wetlands ecosystem. Wider buffers than those noted below may be required to establish conformance with other Coastal Policies.

1. A Wetlands Buffer of up to 300 feet in width shall be established around Wetlands regulated under the Wetlands Act of 1970.

2. A Wetlands Buffer or transition area of up to 150 feet in width shall be established around Wetlands regulated under the Freshwater Wetlands Protection Act (see Freshwater Wetland Protection Act Rules, N.J.A.C. 7:7A).

(b) Development is prohibited in a wetlands buffer around Wetlands regulated pursuant to the Wetlands Act of 1970, unless it can be demonstrated that the proposed development will not have a significant adverse impact and will cause minimum feasible adverse impact, through the use of mitigation where appropriate on the wetlands, and on the natural ecotone between the wetlands and the surrounding upland. The precise geographic extent of the required actual wetlands buffer on a specific site shall be determined on a case-by-case basis using these standards.

(c) All Wetlands Buffers (that is, transition areas) associated with Wetlands subject to the Freshwater Wetlands Protection Act shall be regulated in accordance with the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

(d) In areas of the coastal zone which are within the Pinelands Area (N.J.A.C. 7:7E-3.24) and the Hackensack Meadowlands District, the appropriate buffer width shall be determined by the method prescribed in Report 30B of the Pinelands Commission publication, entitled "Buffer Delineation Model for New Jersey Pinelands Wetlands, 1985," and by the Hackensack Meadowlands District Zoning Regulations, respectively.

[(c)](f) (No change in text.)

[7:7E-3.27] 7:7E-3.29 Cranberry [bogs] **Bogs**

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

[7:7E-3.28] 7:7E-3.30 Wet [borrow pit margins] **Borrow Pit Margins**

(a) "Wet [borrow pit margins] **Borrow Pit Margins**" are areas surrounding [wet borrow pits] **Wet Borrow Pits** (see definition at N.J.A.C. [7:7E-3.15(a)] 7:7E-3.14(a)). They extend from normal water level in the borrow pit below to the inland limit of a water quality buffer. The width of this buffer will vary by substrate texture. Where soils are coarse, that is sands or gravels, the width will be 100 feet; elsewhere, it will be 50 feet.

1. Where a Wet Borrow Pit Margin is also a Wetland and/or Wetlands Buffer, Wetlands and/or Wetlands Buffer Policies (N.J.A.C. 7:7E-3.27 and 3.28) shall apply.

(b)-(h) (No change.)

[7:7E-3.29] 7:7E-3.31 Coastal [bluffs] **Bluffs**

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

[7:7E-3.30] 7:7E-3.32 Intermittent [stream corridors] **Stream Corridors**

(a) "Intermittent [stream corridors] **Stream Corridors**" are areas including and surrounding surface water drainage channels in which there is not a permanent flow of water and which contains an area or areas with a seasonal high water table depth equal to or less than one foot. [They are also called swales and ephemeral stream corridors.] The inland extent of these corridors is either the inland limit of soils with a seasonal high water table depth equal to, or less than one foot, or a distance of 25 feet [on either side of the channel] measured from the top of the channel banks, whichever is greater (see Figure [18] 7).

1. Where an Intermittent Stream Corridor is also a Wetland (N.J.A.C. 7:7E-3.25), the Wetlands Policy shall apply.

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

Agency note: N.J.A.C. 7:7E-3.33 through 3.35 are Special Land Areas

[7:7E-3.31] 7:7E-3.33 Farmland [conservation areas] **Conservation Areas**

(a) "Farmland [conservation areas] **Conservation Areas**" are [defined as contiguous areas of 20 acres or more (in single or multiple tracts of single or multiple ownership) any county **Agricultural Development Areas certified pursuant to N.J.A.C. 2:76, or areas of 20 or more on-site contiguous acres with soils in the Capability Classes I, II and III or special soils for blueberries and cranberries as mapped by the United States Department of Agriculture, Soil Conservation Service, in National Cooperative Soil Surveys, which [are actively farmed, or suitable for farming, unless it can be demonstrated by the applicant that new or continued use of the site for farming or farm-dependent purposes is not economically feasible. Farming or farm-dependent purposes include nurseries, orchards, vegetable and fruit farming, raising grains and seed crops, silviculture (such as christmas tree farming), floriculture (including greenhouses), dairying, grazing, livestock raising, and wholesale and retail marketing of crops, plants, animals and other related commodities] have been assessed as farmland by the local tax assessor for two years out of the five year period immediately prior to filing a coastal permit application.**

1. "Agricultural use" means the use of land for common farmsite activities, including but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing.

2. "Board" means a county agriculture development board established pursuant to section 7 or a subregional agricultural retention board established pursuant to section 10 of the Agriculture Retention and Redevelopment Act as amended February 9, 1988 (N.J.S.A. 4:1C-11 et seq.).

3. "Committee" means the State Agriculture Development Committee established pursuant to section 4 of the Right to Farm Act, N.J.S.A. 4:1C-4.

(b) Farmland [conservation areas] **Conservation Areas** shall be maintained and protected for open spaces or [farming purposes] **agricultural uses**. [Farming or farm-dependent uses are permitted uses in farmland conservation areas.] Housing is permitted only if it is an accessory use to farming. Mining is permitted only in accordance with a reclamation plan which meets the requirements of the Mining Use Policy (N.J.A.C. 7:7E-7.8).

(c) Continued, renewed, or new farming is encouraged in Farmland [conservation areas] **Conservation Areas**.

(d) Unless the Board or the Committee recommends otherwise, development other than for agricultural use is prohibited in certified Agricultural Development Areas and is conditionally acceptable elsewhere in the Farmland Conservation Areas provided that the loss of farmland will be adequately compensated.

1. In cases where the board or the Committee recommends that a development is an exception to this general ruling, the Department will consider the board's and/or the Committee's recommendations and determine the acceptability of that particular development on a case-by-case basis.

(e) All developments for non-agricultural use found acceptable in the Farmland Conservation Area shall adequately compensate for the loss of the farmland by ensuring that an area of equal acreage and soil capability will be placed under permanent protection from non-agricultural developments. This compensation shall be accomplished by:

1. Making a monetary contribution in the amount equivalent to the value of the development easement (as defined by the Agricultural Retention and Development Act, N.J.S.A. 4:1C-11 et seq., at N.J.S.A. 4:1C-13f) of the site to the board;

2. Dedicating a development easement purchased for an area of equal acreage and same soil capability near the site or within a Certified Agricultural Development Area to the board, which shall determine the appropriateness of the proposed mitigation prior to acceptance; or

3. Other comparable compensation measures approved by the Department.

[(d)](f) (No change in text.)

[7:7E-3.32] 7:7E-3.30 Steep [slopes] **Slopes**  
(a)-(c) (No change.)

[7:7E-3.33] 7:7E-3.35 Dry [borrow pits] **Borrow Pits**  
(a)-(j) (No change.)  
(Agency note: N.J.A.C. 7:7E-3.35 through 3.48 are Coastwide and Regional Special Areas)

[7:7E-3.34] 7:7E-3.36 Historic and [archaeological resources] **Archaeological Resources**

(a) "Historic and [archaeological resources] **Archaeological Resources**" include objects, structures, shipwrecks, neighborhoods, districts, and [man-made or man-modified] other features of the landscape and seascape, including archaeological sites, which either are on or are eligible for inclusion on the State or National Register of Historic Places. The criteria for eligibility are defined at N.J.A.C. [7:4-4.2] 7:4.

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

(d) Scientific recordings and/or removal of the historic and archaeological resources or other mitigation measures must take place, if the proposed development would irreversibly and/or adversely affect historic and archaeological resources. Surveys and reports to identify and evaluate historic and archaeological resources potentially eligible for the State or National Registers shall be performed by professionals who meet the National Park Service's Professional Qualifications Standards in the applicable discipline. Professional procedures and reports shall meet the applicable Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation and the professional reporting and survey guidelines of the Office of New Jersey Heritage in the Division of Parks and Forestry, DEP, once these guidelines are promulgated as rules, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The same qualifications and performance standards shall apply to documentation, investigations, and reports prepared pursuant to (e) below. A description of these qualifications and performance standards is available at the Office of New Jersey Heritage.

(e)-(g) (No change.)

[7:7E-3.35] 7:7E-3.40 Specimen [trees] **Trees**  
(a)-(c) (No change.)

[7:7E-3.36] 7:7E-3.38 Endangered or [threatened wildlife or vegetation species habitats] **Threatened Wildlife or Vegetation Species Habitats**

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

(c) The following **wildlife** species were listed as endangered on the State list in January, 1984 as amended on May 6, 1985 and July 20, 1987:

... BIRDS  
...  
**Loggerhead Shrike** **Lanius ludovicianus**  
...

(d) The following **wildlife** species were listed as **threatened species** on the State list in January, 1984, as amended on May 6, 1985 and July 20, 1987:

... BIRDS  
...  
**American Bittern** **Botaurus leucostriatus**  
**Northern Goshawk** **Accipiter gentilis**  
**Black Rail** **Laccipiter jamaicensis**  
**Barred owl** **Strix varia**  
...

[(e) No official State or Federal list of endangered or threatened vegetation (flora) species exists. The Federal Register, Volume 4, No. 229, November 28, 1983 lists species being considered for listing as Endangered or Threatened. In the interim, this policy will apply to those plants listed as "Endangered" or "Threatened" by D.B. Snyder and V.E. Vivian in: Rare and Endangered Vascular Plants Species in New Jersey, The Conservation and Environmental Studies Center, Inc. (1981), as well as to those plants listed in Section 6-204 of the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-6.24). Habitats of species eligible to be on the list are included in the definition so that the policy will apply to species identified since the last promulgations of the official list.]

(e) Refer to N.J.A.C. 7:5C-5.1 for the official State list of **endangered plant species**.

(AGENCY NOTE: The official State list of endangered plant species was proposed by the Department in the January 16, 1990 New Jersey Register at 22 N.J.R. 94(a).)

(f) (No change.)

[7:7E-3.37] 7:7E-3.39 Critical [wildlife habitats] **Wildlife Habitats**  
(a)-(d) (No change.)

[7:7E-3.38] 7:7E-3.40 Public [open space] **Open Space**  
(a) "Public [open space] **Open Space**" constitutes land areas owned [and] or maintained by State, Federal, county and municipal agencies or [non-profit] private groups (such as conservation organizations and homeowner's associations) and **used for or dedicated** to conservation of natural resources, public recreation, **visual or physical public access**, or wildlife protection or management. Public [open space] **Open Space** [also] includes, but is not limited to, State Forests, State Parks, and State Fish and Wildlife Management Areas, **lands held by the New Jersey Natural Lands Trust** (N.J.S.A. 13:1B-15.119 et seq.), **lands held by the New Jersey Water Supply Authority** (N.J.S.A. 58:1B-1 et seq.) and designated Natural Areas (N.J.S.A. 13:1B-15.12a et seq.) within DEP owned and managed lands.

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

[7:7E-3.39] 7:7E-3.41 Special [hazard areas] **Hazard Areas**

(a) "Special [hazard areas] **Hazard Areas**" include areas with a known actual or potential hazard to public health, safety, and welfare, or to public or private property, such as the navigable air space around airports and seaplane landing areas, potential evacuation zones [around major industrial and energy facilities] and areas where hazardous [materials] **substances as defined at N.J.S.A. 58:10-23.11b-k** are used or disposed, including adjacent areas and **areas of hazardous material contamination**.

(b) (No change.)

(c) Approvals from the DEP's Division of Hazardous Waste Management shall be obtained prior to the commencement of any hazardous substance investigations or clean-up activities at contaminated sites.

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

[7:7E-3.40] 7:7E-3.42 Excluded Federal [lands] Lands

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

[7:7E-3.41] 7:7E-3.43 Special [urban areas] Urban Areas

(a) Special [urban areas] Urban Areas are those municipalities defined in urban aid legislation (N.J.S.A. 52:27D-178), qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. [In 1984, Special Area included the] The following [24] 32 coastal municipalities qualify as Special Urban Areas in 1989:

Asbury Park	Keansburg	Paulsboro
Bayonne	Kearny	Pennsauken
Belleville	Lakewood	Penns Grove
Bridgeton	Long Branch	Perth Amboy
Camden	Millville	Pleasantville
Commercial Twp.	Neptune Twp.	[Rahway]
Elizabeth	New Brunswick	Salem
Gloucester City	Newark	Trenton
Gloucester Twp.	North Bergen	West New York
Hoboken	Old Bridge	Weehawken
Jersey City	Passaic City	Woodbury

(b)-(e) (No change.)

[7:7E-3.42] 7:7E-3.44 Pinelands National Reserve and Pinelands Protection Area

(a) (No change.)

(b) Coastal development shall be consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, Section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.).

1. Within the Pinelands National Reserve, the Pinelands Commission will serve as a reviewing agency for coastal construction permit applications.

2. The Division of Coastal Resources and the Pinelands Commission will coordinate the permit review process through the procedure outlined in the February 8, 1988 Memorandum of Agreement between the two agencies and any subsequent amendments to that agreement. Copies are available from the Division of Coastal Resources, Planning Group, CN 401, 501 East State, Trenton, New Jersey 08625.

(c) Coastal activities in areas under the jurisdiction of the Pinelands Commission shall not require a Freshwater Wetlands permit, or be subject to transition area requirements of the Freshwater Wetlands Protection Act, except that discharge of dredged or fill materials in freshwater wetlands and/or State open waters may require a permit issued under the provisions of Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Clean Water Act of 1977, or under an individual or statewide general permit program administered by the State under the provisions of the Federal Act and applicable State laws.

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

[7:7E-3.43] 7:7E-3.45 Hackensack Meadowlands District

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

(c) Coastal activities under the jurisdiction of the HMDC shall not require a Freshwater Wetlands permit, or be subject to transition area requirements of the Freshwater Wetlands Protection Act, except that discharge of dredged or fill materials may require a permit issued under the provisions of Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Federal Clean Water Act of 1977, or under an individual or general permit program administered by the State under the provisions of the Federal Act and applicable State laws.

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

[7:7E-3.44] 7:7E-3.46 Wild and [scenic river corridors] Scenic River Corridors

(a) "Wild and [scenic river corridors] Scenic River Corridors" are components of the New Jersey Wild and Scenic Rivers System designated by the DEP Commissioner under N.J.S.A. 13:8-45 et seq. River

corridors include the river and adjacent upland to the limit of the Flood Hazard Area or to the limit of State owned lands, whichever is furthest inland.

1. "Wild and Scenic River Corridors" shall also mean any river adopted into the National Wild and Scenic Rivers System or any rivers or segments thereof being studied for possible inclusion into that system pursuant to the Wild and Scenic River Act (16 U.S.C. §§1271-1278). River corridors established under the Federal Wild and Scenic River Act shall include the river and an adjacent upland area extending one-quarter mile on each side of the river.

(b) Policy relevant to [wild and scenic river corridors] Wild and Scenic River Corridors is as follows:

1.-3. (No change.)

4. Development which would have an adverse effect on the values for which a river is being considered as a potential addition to the National Wild and Scenic Rivers System, including but not limited to the scenic, recreational, and fish and wildlife attributes of the river corridor, is prohibited.

5. Development which does not conform to the standards set forth by the Secretary of Interior or the Secretary of Agriculture, as may be appropriate, pursuant to Section 6(c) of the National Wild and Scenic River Act or which would otherwise jeopardize the "outstanding remarkable" values for which a river corridor has been adopted into the Wild and Scenic River System is prohibited.

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

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

[7:7E-3.45] 7:7E-3.47 Geodetic [control reference marks] Control Reference Marks

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

[7:7E-3.46] 7:7E-3.48 Hudson River Waterfront Area

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

(e) All waterfront development along the Hudson River shall develop, maintain and manage a section of the Hudson Waterfront Walkway coincident with the shoreline of the development property. The developer shall, by appropriate instrument of conveyance create a conservation easement in favor of the Department. The conservation easement shall define the physical parameters of the walkway and the allowable uses, address the maintenance and management duties and identify the responsible party. Development of each project's public access system shall conform to this special area policy and to the Hudson Waterfront Walkway Planning and Design Guidelines (1984) and the Hudson Waterfront Walkway Design Standards (1989), subject to the following clarification:

1.-3. (No change.)

(f) (No change.)

#### SUBCHAPTER 4. GENERAL WATER AREAS

7:7E-4.9 Lakes, [ponds and reservoirs] Ponds and Reservoirs

(a) (No change.)

(b) Policy: See Policy Summary Table, N.J.A.C. 7:7E-4.2. In addition, all activities shall comply with all applicable Freshwater Wetlands Protection Rules, N.J.A.C. 7:7A.

(c) (No change.)

7:7E-4.11 Acceptability [conditions] Conditions for [uses] Uses

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

(d) Standards relevant to docks and piers (for cargo and commercial fisheries) are as follows:

1. "Docks and piers (for cargo and passenger movement and commercial fisheries)" are structures supported on pilings driven into the bottom substrate or floating on the water surface, used for loading and unloading passengers or cargo, including fluids, connected to or associated with a single industrial or manufacturing facility or to commercial fishing facilities. Rules for docks and piers intended for multiple uses may be found under Use Policies for Ports (N.J.A.C. 7:7E-7.9). Policies for docks composed of fill and retaining structures may be found under the category "filling" (See [(i)](j) below).

2. Docks and piers for cargo and passenger movement and commercial fisheries are conditionally acceptable in most General Water Areas, provided that:

i. **The width and length of the piers are limited to only what is necessary for the proposed use;**

[i.]ii. [The] They will not pose a hazard to navigation; and

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

3. (No change.)

(e) Standards relevant to docks and piers (recreational) are as follows:

1. "Recreational and fishing docks and piers" are structures supported on pilings driven into the bottom substrate, or floating on the water surface, which are used for recreation or fishing, or for the mooring of boats [which are] used for recreation or fishing, [including] **except commercial fishing.**

2. [Docks] **Recreational docks and piers including mooring piles, are conditionally acceptable in General Water Areas [bodies] provided that:**

i.-ii. (No change.)

iii. The docks and piers and **their associated mooring piles** are located so as to not hinder navigation or conflict with overhead transmission lines;

iv. (No change.)

v. Space between horizontal planking is maximized and width of horizontal planking is minimized to the maximum extent practicable. **Under normal circumstances, a minimum of 3/8 inch, 1/2 inch, 3/4 inch, or one inch space is to be provided for four inch, six inch, eight to 10 inch, or 12 inch plus wide planks, respectively.**

vi. The width of the structure [is minimized relative to height above the water, to the maximum extent practicable, especially where crossing above vegetated wetlands or submerged vegetation, and except under unusual circumstances the width does not exceed 8 feet; and] **shall not exceed twice the clearance between the structure and the surface of the ground below or the water surface at mean high tide, whichever is closer to the structure, (measured from bottom of stringers) except for floating docks. Under typical circumstances the maximum width of the structure shall be eight feet over water and six feet over marsh, wetlands and mudflats. The height of the structure over wetlands shall be a minimum of three feet regardless of width;**

vii. In lagoons the structure extends no more than 20 percent of the width of the lagoon from bank to bank[.]; and

viii. **Breakwater attached to the structures shall be at least 18 inches above the bottom of the waterway and shall provide a minimum of three-inch spacing between planks.**

3.-4. (No change.)

(f) Standards relevant to maintenance dredging are as follows:

1. "Maintenance dredging" is the removal of accumulated sediment from previously authorized navigation **and access channels, marinas, lagoons or boat moorings, for the purpose of maintaining an authorized water depth and width for safe navigation. Dredging beyond those authorized dimensions is "new dredging" (see N.J.A.C. [7:7E-4.11(f)] 7:7E-4.11(g)).**

2. Maintenance dredging is conditionally acceptable to the authorized depth, length and width within all General Water Areas to ensure that adequate water depth is available for safe navigation, provided that:

i. (No change.)

ii. A pre-dredging chemical and physical analysis[, bioaccumulation test, and bioassay of sediments is conducted by the applicant in] **of the dredge spoil may be required for upland disposal at sites where the Department suspects contamination of sediments. For ocean disposal of dredge spoils from sites suspected of being contaminated, additional testing, such as a bioaccumulation test, and bioassay of sediments, may also be required. The results of these tests will be used to determine if hazardous substances may be resuspended at the dredging site and what methods may be needed to control their escape. The results will also be used to determine acceptability of a dredged material disposal site.**

iii. (No change.)

iv. If predicated water quality parameters are likely to exceed State Surface Water Quality Standards, or if pre-dredging chemical analysis of sediments reveals significant contamination, then the Department will work cooperatively with the applicant to fashion accep-

table control measures or, in the alternative, may impose seasonal restrictions under the specific circumstances identified below.

v.-vii. (No change.)

3. (No change.)

(g) The standards relevant to new dredging are as follows:

1. "New dredging" is the removal of sediment from the bottom of a water body that has not been previously dredged, for the purpose of increasing water depth, or the widening or deepening of navigable channels to a newly authorized depth or width.

2. Acceptability conditions relevant to new dredging are as follows:

i.-ii. (No change.)

iii. New dredging or excavation to create new lagoons for residential development is prohibited in [wetlands] **Wetlands, Wetlands Buffer, Endangered or Threatened Wildlife or Vegetation Species Habitats as defined in N.J.A.C. 7:7E-3.25, 3.26 and 3.40 and discouraged elsewhere.**

iv.-v. (No change.)

[v.]vi. (No change in text.)

(h)-(s) (No change.)

## SUBCHAPTER 5. GENERAL LAND AREAS

### 7:7E-5.3 Coastal [growth rating] Growth Rating

(a) The [coastal zone] **Coastal Zone** is classified into [13]15 different regions on the basis of the varied pattern of existing coastal development and natural and cultural resources (See Figure 12). For [the] **these [region] regions**, the Department uses three broad regional growth strategies:

1.-2. (No change.)

3. The Limited Growth Region contains large environmentally sensitive areas. Generally, only infill development is acceptable here[, with the exception of development which meets the requirements of the Large-Scale Residential Development Policy (N.J.A.C. 7:7E-7.2(i)).

(b) (No change.)

(c) **The Bay Island Region is comprised of islands or filled areas situated between the uplands of the mainland and barrier islands, and is designated a Limited Growth Region.**

[(c)](d) The Urban Area region consists of all Special Urban Areas. (See N.J.A.C. [7:7E-3.41] 7:7E-3.43) and Atlantic City. This region is a Development Region.

1. Atlantic: [Atlantic City] **Pleasantville City.**

2. Camden: Camden, Gloucester City, Gloucester Township and Pennsauken Township.

3. (No change.)

4. Essex: **Belleville and Newark.**

5. Hudson: Bayonne, Hoboken, Jersey City, Kearny, North Bergen, West New York and Weehawken.

6.-9. (No change.)

10. Salem: **Penns Grove Borough and Salem.**

[10.]11. Union: Elizabeth[, Rahway].

[11.]12. (No change in text.)

[(d)-(f)](e)-(g) (No change in text.)

[(g)](h) The Barnegat Corridor Region includes those portions of Ocean County south of Cedar Creek and north of Cedar Run Creek to the west of U.S. Highway 9 and north of State Highway 72 to the east of U.S. Highway 9, and is designated an Extension Region.

[(h)](i) The Mullica-Southern Ocean Region includes those portions of Ocean County south of State Highway 72 to the east of U.S. Highway 9 and south of Cedar Run Creek to the west of U.S. Highway 9 except for the Tuckerton Region, all of Bass River Township, Burlington County, and those portions of Atlantic County north of County Road 561 (Jimmy Leeds Road), located within the coastal zone, and is designated a Limited Growth Region.

[(i)-(o)](j)-(p) (No change in text.)

### 7:7E-5.4 Environmental Sensitivity [rating] Rating

(a) Environmental Sensitivity is [a composite] **an indication of the general suitability of a land area for development based on [vegetation and] soils. [These factors are combined to indicate High, Moderate, or Low Environmental Sensitivity on a site or parts of a site.**

**PROPOSALS**

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**ENVIRONMENTAL PROTECTION**

This section first defines these rankings and then defines the two factors.]

(b) High Environmental Sensitivity Areas are land areas with [the following characteristics:] **wet or high permeability moist soils.**

- 1. Forest vegetation; and
- 2. Wet or high permeability moist soil adjacent to a stream channel (permanent or ephemeral), as defined in (e)2 below.]

1. **“Wet or high permeability moist soils” are soils with a depth to seasonal high water table of three feet or less, unless the soils are loamy sand or coarser in which case they are soils with a depth to seasonal high water table of four feet or less.**

(c) (No change.)

(d) Low Environmental Sensitivity Areas are areas with depth to seasonal high water greater than five feet. [and one of the following characteristics:]

- 1. On-site paving or structures; or
- 2. Areas with bare earth or herbaceous vegetation or early successional meadow with Agricultural Capability Class V-VIII Soils, except soils suitable for blueberry and cranberry production.

(e) Definitions of Environmental Sensitivity Factors are as follows:

1. “Forest vegetation” is defined as an area of trees and shrubs where a majority of the trees are four inches in diameter breast high (dbh) or greater.

2. “Wet or high permeability moist soils” are soils with a depth to seasonal high water table less than, or equal to, three feet, unless the soils are loamy sand or coarser in which case they are soils with a depth to seasonal high water table less than, or equal to, four feet.]

[(f)-(g)](e)-(f) (No change in text.)

7:7E-5.5 Development [potential] **Potential**

(a) (No change.)

(b) The standards relating to Residential Development Potential are as follows:

1.-3. (No change.)

4. Low Potential sites in **Limit Growth or Extension Regions** meet any one of the following criteria:

i. Roads: A site located more than 1,000 feet from the nearest paved public road; [and more than five miles from the nearest intersection with a limited access highway, parkway or expressway, except in Development Regions where the site may be located more than 1,000 feet from the nearest paved public road; or]

ii. **Sewerage: sites located more than 1,000 feet from an adequate wastewater treatment system and characterized by soils unsuitable for on-site sewage disposal systems; or**

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

(c)-(f) (No change.)

7:7E-5.7 Land Acceptability Tables

(a) Introduction: The Land Acceptability Tables, one for each of the three regional growth types, indicate the acceptability intensity of development of a site or parts of a site for each of the nine possible combinations of Environmental Sensitivity and Development Potential factors in each table. Since Development Potential applies to an entire site, each site can have a maximum of three different levels of acceptable intensity, if it has three areas with different levels of Environmental Sensitivity.

Land Acceptability Table: Development Region  
(Urban Areas, Northern Waterfront, Northern, Central Absecon-Somers Point Regions, and Delaware River)

Area Type Number	DEVELOPMENT POTENTIAL			ENVIRONMENTAL SENSITIVITY			ACCEPTABLE DEVELOPMENT INTENSITY		
	High	Medium	Low	Low	Medium	High	High Intensity	Moderate Intensity	Low Intensity
1	X			X			X		
2	X				X		X		
3	X					X		X	
4		X		X			X		
5		X			X		X		
6		X				X			X
7			X	X					X
8			X		X				X
9			X			X			X

Land Acceptability Table: Extension Region  
(Southern, Western Ocean, and Barnegat Corridor Regions)

Area Type Number	DEVELOPMENT POTENTIAL			ENVIRONMENTAL SENSITIVITY			ACCEPTABLE DEVELOPMENT INTENSITY		
	High	Medium	Low	Low	Medium	High	High Intensity	Moderate Intensity	Low Intensity
1	X			X			X		
2	X				X		X		
3	X					X		X	
4		X		X				X	
5		X			X			X	
6		X				X			X
7			X	X					X
8			X		X				X
9			X			X			X

Land Acceptability Table: Limited Growth Region  
(Mullica-Southern Ocean, Great Egg Harbor River Basin, and Delaware Bayshore Regions)

Area Type Number	DEVELOPMENT POTENTIAL			ENVIRONMENTAL SENSITIVITY			ACCEPTABLE DEVELOPMENT INTENSITY		
	High	Medium	Low	Low	Medium	High	High Intensity	Moderate Intensity	Low Intensity
1	X			X				X	
2	X				X			X	
3	X						X		
4		X		X				X	X
5		X			X				X
6		X					X		X
7			X	X					X
8			X		X				X
9			X				X		X

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

SUBCHAPTER 7. GENERAL LOCATION POLICIES

7:7E-7.2 Housing [use policies] Use Policies

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

[(f) Standards relevant to affordable housing are as follows:

1. Definitions:

i. "Affordable" means housing with monthly carrying costs which are no greater than 30 percent of a household's gross monthly income for rental housing, and no greater than 28 percent of a household's gross monthly income for housing offered for sale.

ii. "Affordable housing" means housing which is affordable by low or moderate income households.

iii. "Low income household" means a household which has an income that is 50 percent or less of regional median household income adjusted for household size as determined by the U.S. Department of Housing and Urban Development.

iv. "Moderate income household" means a household which has an income which is between 50 and 80 percent of the regional median household income adjusted for household size as determined by the U.S. Department of Housing and Urban Development.

v. "Income" means all forms of taxable income as determined by HUD regulations governing Section 8 eligibility.

vi. "Monthly carrying costs" consist of mortgage payments, real estate tax, insurance, and condominium association fees for housing offered for sale; and consist of rent payments for housing offered for rent inclusive of utilities. This definition also includes any other mandatory costs imposed by law, contract, or by oral or written agreement with the landlord, homeowner association or other similar group.

vii. "Area" means a Primary Metropolitan Statistical Area (PMSA) according to data published annually by the United States Department of Housing and Urban Development and available from HUD regional offices in Camden and Newark.

2. The Affordable Housing Policy shall apply to all coastal developments of 100 units or more which are not located in the Urban Areas Region, the Delaware River Region or the Northern Waterfront Region (See N.J.A.C. 7:7E-5.3).

3. A project located in the Urban Areas Region may be required to provide an appropriate amount of low and moderate income housing if a determination is made that the proposed project will result in the displacement of low and moderate income households or the proposed project will use public funds for the development of housing.

4. Proposed developments subject to this policy must provide at least 10 percent of the units to be built at prices affordable by low income households and at least 10 percent of the units at prices affordable by moderate income households.

5. Agreements approved by the Division shall ensure that the sale, resale and rental of affordable housing is limited to households

eligible for low and moderate income housing, and that the units remain affordable for a period of at least 30 years. In evaluating an applicant's proposal to meet the policy, the Division will recognize that if the price of the market units is close to the acceptable price for the moderate income units, restrictions concerning resale may make the units unmarketable and will therefore not be required.

6. The Affordable Housing standards shall be met by either of two methods:

i. Construction of the affordable units on site; or

ii. Construction or rehabilitation of the affordable units off-site but within the municipality in which the project is located or at a location agreed to by the Division of Coastal Resources as a special case. A special case location outside of the project municipality is acceptable when the construction or rehabilitation meets a need for affordable housing in the area.

7. If it can be demonstrated that compliance with the affordable housing policy cannot be achieved by on or off-site development of housing, or that the objectives of the policy could be better fulfilled in another way, the requirement may also be met by the following method:

i. A contribution which is dedicated to a specific project to be conducted by an appropriate State, county, municipal, or non-profit agency, entity, authority or organization to be used for the construction or rehabilitation of housing units elsewhere in the subject municipality or at a location agreed to by the Division of Coastal Resources as a special case as specified in N.J.A.C. 7:7E-7.2(f)6ii. A plan and time schedule showing how affordable housing will be provided with these funds must also be produced prior to the issuance of a CAFRA permit.

ii. The appropriate contribution shall be based upon the number of units built and the selling or rental prices of the units. The following formula shall be used to determine the contribution:

The contribution shall equal (2 percent of average unit price) x (total number of units in the project).

8. Prior to the start of housing construction the developer shall obtain approval by the Division of Coastal Resources of a schedule for the establishment of the required number of affordable units in a project receiving a CAFRA permit. The schedule must indicate that the construction of the affordable units will be completed prior to full construction of the market units.

9. If the municipality in which the proposed residential development is to be located has received a judgment of compliance with the Mount Laurel II decision for its affordable housing zoning ordinance or plan by a New Jersey Supreme Court appointed Mount Laurel judge, or the State Council on Affordable Housing and the zoning plan provides for an adequate amount of affordable housing in the CAFRA approvable area as determined by the Division of Coastal Resources, this affordable housing policy shall not apply.]

(f) Standards relevant to the development of a single family home or duplex located upland of the mean high water line are as follows:

1. All structures and on-site improvements shall comply with the Coastal Policies for Beaches, Dunes, Wetlands and Coastal Bluffs, and shall comply with other Coastal Policies by meeting the following minimum standards. Compliance with the applicable policies may require changes in building design and/or location.

i. On sites with shore protection structures, the residential structure shall be set back, at a minimum of 25 feet, from oceanfront shore protection structures, and at a minimum of 15 feet from bulkheads elsewhere. This distance is measured from the seaward face of a bulkhead or seawall and from the top of slope on the seaward face of a revetment.

ii. For sites adjacent to surface water bodies or wetlands, a silt fence shall be erected along the limit of disturbance parallel to the shoreline or wetlands limits. This fence shall have a 10-foot return on each end, be erected prior to construction and remain in place until all construction and landscaping is completed.

iii. For sites partially or completely within the Erosion Hazard Area or Coastal High Hazard Area, only infill developments meeting the following criteria are acceptable. Infill is defined as no more than two buildable vacant lots, as defined by the municipality and shown by the municipal record as such on or prior to October 3, 1988, with houses located on both sides of the vacant lot(s).

(1) The lowest structural member must be at least one foot above the base elevation.

(2) The house shall be constructed as close to the landward site boundary as possible, and shall not be constructed waterward of the adjacent developments.

iv. For wooded sites, site clearing shall be limited to an area no greater than 20 feet from the footprint of the dwelling and to the areas deemed necessary for driveway, septic and utility line installations.

v. Indigenous coastal plants shall be used in landscaping wherever feasible. No plastic liners shall be used in the landscaped or gravel areas. All liners shall be made of filter cloth or other permeable material.

vi. All driveways shall be surfaced with permeable materials or pitched to drain all runoff onto permeable areas of the site.

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

[(i) Standards relevant to large-scale multi-use development are as follows:

1. "Large-scale multi-use developments" are free standing, planned developments, such as planned unit developments, which combine at least 500 residential dwelling units with commercial, industrial, recreational, or other uses.

2. Large-scale multi-use developments are conditionally acceptable, provided that they carry out the basic coastal policy to concentrate the regional pattern of development, contribute to regional housing needs, do not cause significant adverse secondary impacts, and will not induce growth outside the site boundary which is inconsistent with coastal policies.

3. Large-scale multi-use developments need not meet the Land Area Policies, except in the high and moderate environmental sensitivity portions of Limited Growth Regions, where only the roads and sewage criteria will be used in determining if the Development Potential is High, Medium or Low (See N.J.A.C. 7:7E-5.5(b)). Large scale multi-use development in Limited Growth Regions must, however, incorporate a buffer along the perimeter of the site of sufficient size to preclude scattered peripheral development.]

7:7E-7.3 [“]Resort/[recreational use”] **Recreational Use**

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

(d) Standards relevant to marinas are as follows:

1. "Marina" means any dock, pier, bulkhead, mooring or similar structure or a collection of adjacent structures under singular or collective control or management providing permanent or semi-permanent dockage to five or more vessels.

[1.]2. New marinas or [expanded] expansion or renovation of existing marinas for recreational boating are conditionally acceptable if:

i. The proposed marina includes the development of an appropriate mix of dry storage areas, public launching facilities, [and] berthing spaces, repair and maintenance facilities, and boating and hardware supply facilities, depending upon the site conditions; [and]

ii. The proposed marina posts prominent signs indicating discharges shall not be allowed within the basin and provides adequate and conve-

niently located pumpout stations, restrooms and portable toilet emptying receptacles for wastewater disposal from boats [in a manner consistent with Federal and State water quality laws and regulations.];

iii. At least one portable toilet emptying receptacle shall be provided at a marina. This requirement may be satisfied either by the installation of a receptacle device or by the designation of either a pumpout or restroom facility for this use; and

iv. All restrooms, pumpout facilities and portable toilet emptying receptacles shall dispose of the collected water in a manner acceptable to the Department as follows:

(1) Discharge to a municipal or regional treatment plant where practicable;

(2) Discharge to a subsurface sewage disposal system constructed in accordance with N.J.A.C. 7:9-2; or

(3) Discharge to a holding tank with waste being removed by a licensed septage hauler. A marina employing this method shall maintain a record of waste removal.

[2.-7.]3.-8. (No change in text.)

(e) (No change.)

7:7E-7.4 Energy [use policies] **Use Policies**

(a) (No change.)

(b) Standards relevant to general energy facility siting procedure are as follows:

1. The acceptability of all proposed new or expanded coastal energy facilities shall be determined by a review process that includes both the Department and the [New Jersey Department of Energy (NJDOE)] Board of Public Utilities (BPU) (N.J.S.A. [52:27F-1] 52:27F-6 and 52:27-11 et seq.) according to the procedures defined in the Memorandum of Understanding between the Department and [NJDOE] BPU on Coordination of Permit Reviews.

2. [NJDOE] BPU will determine the need for future coastal energy facilities according to three basic standards. [DOE] BPU will submit an Energy Report to the Department with its determination of the need for a coastal energy facility based on three required findings:

i.-iii. (No change.)

3. (No change.)

4. If [NJDOE] BPU has submitted an Energy Report to the Department, the Department decision document shall refer to the [NJDOE] BPU Energy Report and indicate the Department's reasons for differences, if any, between the Department decision and the [NJDOE] BPU Energy Report.

5. Where [NJDOE] BPU and the Department disagree on the acceptability of a specific proposed coastal energy facility (for example, on a specific proposed site for one type of energy facility), the disputed decision shall, in accord with State law, be submitted to the State's Energy Facility Review Board for final administrative action.

6. (No change.)

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

(i) Standards relevant to pipelines and associated facilities are as follows:

1. Crude oil and natural gas pipelines to bring hydrocarbons from offshore New Jersey's coast to existing refineries, and oil and gas transmission and distribution systems and other new oil and natural gas pipelines are conditionally acceptable, subject to the following conditions and restrictions:

i. For safety and conservation of resources, the number of pipeline corridors, including trunk pipelines for natural gas and oil, shall be limited, to the maximum extent feasible, and designated following appropriate study and analysis by the Department of Environmental Protection and the [New Jersey Department of Energy] BPU, and interested Federal, State and local agencies, affected industries, and the general public;

ii.-iii. (No change.)

iv. Proposals to construct offshore oil and gas pipelines, originating on the Outer Continental Shelf, and all of the contemplated ancillary facilities along the pipeline route such as, for example, gas separation and dehydration facilities, gas processing plants, oil storage terminals, and oil refineries will be evaluated by DEP and the [New Jersey Department of Energy] BPU in terms of the entire

pipeline corridor through the State of New Jersey and the adjacent territorial sea;

v.-vii. (No change.)

2. (No change.)

(j) Standards relevant to gas separation and dehydration facilities are as follows:

1. (No change.)

2. Separation and dehydration facilities are discouraged in the Bay and Ocean Shore area. Such facilities that are approved shall meet all applicable air and water quality standards, and be protected by adequate visual, sound, and vegetative buffers. Separation and dehydration facilities will be reviewed as part of the overall proposed gas transportation system by the Department and [NJDOE] BPU.

3. (No change.)

(k)-(l) (No change.)

1. (No change.)

2. Gas processing plants proposed for locations between the off-shore pipeline landfall and interstate natural gas transmission lines shall be prohibited from sites within the Bay and Ocean Shore area and shall be located the maximum distance from the shoreline. The siting of gas processing plants will be reviewed in terms of the total pipeline routing system by the Department and [NJDOE] BPU.

3. (No change.)

(n) Standards relevant to other gas-related facilities are as follows:

1. Additional facilities related to a natural gas pipeline such as metering and regulating stations, odorization plants, and block valves are conditionally acceptable in the Bay and Ocean Shore area provided they are protected by adequate visual, sound, and vegetative buffer areas; are approved by the Department and [NJDOE] BPU; and are in compliance with United States Department of Transportation regulation.

2. (No change.)

(o) Standards relevant to oil refineries and petrochemical facilities are as follows:

1. New oil refineries and petrochemical facilities are conditionally acceptable outside of the Bay and Ocean Shore area provided that: they are consistent with all applicable Location and Resource Policies; there is a need for the facility as determined by [NJDOE] BPU; and an Environmental Impact Statement determines that the facility will have no unacceptable impacts.

i.-iii. (No change.)

2. (No change.)

(p)-(q) (No change.)

(r) Standards relevant to electric generating stations are as follows:

1. New or expanded electric generating facilities (for base load, cycling, or peaking purposes) and related facilities are conditionally acceptable subject to the conditions that follow. Conversion or modification of existing generating facilities for purposes of fuel efficiency, cost reduction, or national interest are conditionally acceptable provided they meet applicable State and Federal laws and standards.

i. (No change.)

ii. NJDEP and [NJDOE] BPU shall find the proposed location and design of the electric generating facility is the most reasonable alternative for the production of electrical power that [NJDOE] BPU has determined is needed. The finding shall be based on a comparative evaluation by the applicant of alternative sites within the coastal zone and inland, and of alternative technologies for the transportation and conversion of energy as well as the productive use of plant residuals, including thermal discharges.

iii.-vi. (No change.)

2. (No change.)

(s) (No change.)

7:7E-7.5 Transportation [use policies] Use Policies

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

(d) Standards relevant to parking facilities are as follows:

1.-2. (No change.)

3. The construction of intercept parking facilities along the main access routes to the barrier and bay islands and major urban centers is encouraged. Employee intercept parking to service at least 20 percent of all workers is required for all casino facilities located in Atlantic

City and shall be located off Absecon Island. If off-island sites are not available, temporary use of other sites is conditionally acceptable.

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

7:7E-7.6 Public [facility use policies] Facility Use Policies

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

7:7E-7.7 Industry [use policies] Use Policies

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

7:7E-7.8 Mining [use policies] Use Policies

(a) New or expanded mining operations on land, and directly related development, for the extraction and/or processing of construction sand, industrial sand, gravel, ilmenite, glauconite, and other minerals are conditionally acceptable, provided that the following conditions are met (mining is otherwise exempted from the General Land Areas [policy] Policy, but shall comply with the Special Areas, and General Water Policies):

1.-7. (No change.)

8. The mine development and reclamation plan minimizes the area and time of disruption of agricultural operations and provides for storage and restoration of all Agricultural Class I, II, and III soils, so that there will be no net loss in the area covered by these soils, **whenever feasible**. The placement of soils may be acceptable at an alternate location if a need is demonstrated, there is no net loss in the area covered by these soils and the placement is consistent with all other coastal policies.

7:7E-7.9 Port [use policies] Use Policies

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

7:7E-7.10 Commercial [facility use policies] Facility Use Policies

(a) (No change.)

(b) Standards relevant to casino hotels are as follows:

1. (No change.)

2. Hotel-casino development in Atlantic City shall be located in the city's traditional resort area (along the Boardwalk), and in the State Marina area to the maximum extent practicable.

i.-ii. (No change.)

iii. Hotel-casino development shall comply with the [highrise housing policy] **High-Rise Structures** (N.J.A.C. 7:7E-7.14) and **Transportation Use** (N.J.A.C. 7:7E-7.5) and **Traffic** (N.J.A.C. 7:7E-8.14) Policies.

iv. (No change.)

3. (No change.)

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

7:7E-7.11 Coastal [engineering] Engineering

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

(e) Standards relevant to structural shore protection are as follows:

i. The construction of new shore[-]protection structures or expansion or fortification of existing shore protection structures, including jetties, groins, seawalls, bulkheads, and other retaining [structure] structures to retard longshore transport and/or to prevent tidal waters from reaching erodible material is acceptable only if it meets all of the following seven conditions:

i.-vii. (No change.)

2. Maintenance or reconstruction of an existing [retaining structure] **bulkhead** is conditionally acceptable, provided it does not result in extension of the structure or the upland by more than 18 inches in any direction. Maintenance or reconstruction of an existing [retaining structure] **bulkhead** which results in extension of the structure or upland by more than 18 inches shall be considered new construction.

3.-5. (No change.)

7:7E-7.12 Dredge [spoil disposal on land] Spoil Disposal on Land

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

7:7E-7.13 National [defense facilities use policy] Defense Facilities Use Policy

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

7:7E-7.14 High [rise structures] Rise Structures

(a) [All high] **High** rise structures [more than six stories or] **are buildings or structures** more than 60 feet from existing pre-construction ground level to the **mid-point of sloped roofs or top of parapet**

wall on flat roofs. [are encouraged to locate in an area of existing high density, high-rise and/or intense settlements. High rise housing and structures are acceptable subject to the following conditions:

1. High-rise structures within the view of coastal waters shall be separated from coastal waters by at least one public road or an equivalent area (at least 50 feet) physically and visually open to the public except as provided by N.J.A.C. 7:7E-3.46;

2. The longest lateral dimension of any high-rise structure must be oriented perpendicular to the beach or coastal waters;

3. The proposed structure must not block the view of dunes, beaches, horizons, skylines, rivers, inlets, bays, or oceans that are currently enjoyed from existing residential structures, public roads or pathways, to the maximum extent practicable;

4. High-rise structures outside of the Hudson River Waterfront Special area as defined by N.J.A.C. 7:7E-3.46 shall not overshadow the dry sand beach between 10:00 A.M. and 4:00 P.M. between June 1 and September 20, and shall not overshadow waterfront parks year round;

5. The proposed structure must be in character with the surrounding transitional heights and residential densities, or be in character with a municipal comprehensive development scheme requiring an increase in height and density which is consistent with all applicable Coastal Resource and Development Policies;

6. The proposed structure must not have an adverse impact on air quality, traffic, and existing infrastructure;

7. The proposed structure must be architecturally designed so as to not cause deflation of the beach and dune system or other coastal environmental waterward of the structure.]

(b) High rise structures are encouraged in areas of existing high density, high-rise and/or intense settlements. High rise housing and structures are acceptable subject to the following conditions:

1. High rise structures within 500 feet of the coastal waters, beaches, dunes or public walkways, whichever is farthest inland, are prohibited unless they are within the business or commercial district of a municipality located in a Development Region as designated under the Coastal Growth Rating Policy (see N.J.A.C. 7:7E-5.3);

2. High rise structures within the view of coastal waters in the Delaware Riverfront Region and the Northern Waterfront Region, except in the Hudson River Waterfront Area, are prohibited unless separated from coastal waters by at least one public road or an equivalent area (at least 50 feet) physically and visually open to the public. High rise structures located on piers or platforms along the Hudson River shall conform with the Hudson River Waterfront Area policy (N.J.A.C. 7:7E-3.48). For all other coastal areas, high rise structures are prohibited unless separated from the water, beach, dune or boardwalk, whichever is farthest inland, by a distance equal to twice the height of the structure;

3. High rise structures are prohibited unless the longest lateral dimension is oriented perpendicular to the beach or coastal waters;

4. High rise structures which block the view of dunes, beaches, horizons, skylines, rivers, inlets, bays, or oceans that are currently enjoyed from existing residential structures, public roads or pathways, or that will be enjoyed from any planned public waterfront walkway or park are discouraged;

5. High rise structures are prohibited if they overshadow the dry sand beach between 10:00 A.M. and 4:00 P.M. between June 1 and September 7, and are discouraged where they overshadow waterfront parks, boardwalks and walkways located parallel to the water year round;

6. High rise structures are prohibited unless they are in character with the surrounding transitional heights and residential densities, or in character with a municipal comprehensive development scheme requiring an increase in height and density which is consistent with all applicable Coastal Resource and Development Policies;

7. High rise structures other than amusement rides are prohibited on piers, except along the Hudson River;

8. High rise structures are prohibited unless they provide combined sideyard setbacks equal to or greater than the structure's height and a minimum of 30 feet on either side. For high rise structures with low podium bases, the entire structure shall be set back in accordance to this sideyard requirement, except the height shall be the average of the components; and

9. High rise structures are prohibited unless 20 percent of the site is reserved as open space dedicated to and developed for public use. For projects that are acceptable due to their location as specified at (b) 1 above, at least two-thirds of the designated public open space must be located adjacent and parallel to the shore.

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

#### SUBCHAPTER 8. RESOURCE POLICIES

7:7E-8.2 Marine [fish and fisheries] **Fish and Fisheries**

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

7:7E-8.4 Water [quality] **Quality**

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

7:7E-8.5 Surface [water use] **Water Use**

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

7:7E-8.6 Groundwater [use] **Use**

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

7:7E-8.7 Stormwater [runoff] **Runoff**

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

(c) Standards relevant to flood and erosion control are as follows:

1. [The] For sites subject to fluvial flooding, the flood and erosion control standard for detention requires that volumes and rates be controlled so that after development the site will generate no greater peak runoff from the site than prior to development, for a two-year, 10-year, and/or up to 100-year storm event considered individually.

i. The appropriate flood control measures to be incorporated for detention purposes vary from one site to another, depending on a site's proximity to the drainageways of the watershed.

ii. These design storms shall be defined as either a 24-hour storm using the rainfall distribution recommended by the U.S. Soil Conservation Service when using United States Soil Conservation Service procedures, (such as U.S. Soil Conservation Service, "Urban Hydrology for Small Watersheds," Technical Release No. 55), or as the estimated maximum rainfall for the estimated time of concentration of runoff at the site when using a design method such as the Modified Rational Method. For purposes of computing runoff, all lands in the site shall be assumed, prior to development, to be in good condition (if the lands are pastures, lawns or parks), with good cover (if the lands are woods), or with conservation treatment (if the land is cultivated), regardless of conditions existing at the time of computation.

(d)-(g) (No change.)

7:7E-8.9 Important [wildlife habitat] **Wildlife Habitat**

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

7:7E-8.10 Air [quality] **Quality**

(a) (No change.)

(b) Coastal development shall conform to all applicable State and Federal regulations, standards and guidelines and be consistent with the strategies of New Jersey's State Implementation Plan (SIP). See N.J.A.C. [7:27-2 through 19] 7:27 and New Jersey SIP for ozone, particulate matter, sulfur dioxide, nitrogen dioxide, carbon monoxide, lead, and visibility.

1. Major development may be required to conduct and/or contribute to air quality monitoring and studies, to ascertain a development's projected or actual impact to air quality.

2. If a development is found or projected to cause or exacerbate an air pollution violation, the Department will require that measures be implemented to attain and maintain the standard as set forth in the SIP.

(c) Coastal development shall be located and designed to take full advantage of existing or planned mass transportation infrastructures and shall be managed to promote mass transportation services, as required under the Traffic Policy (N.J.A.C. 7:7E-8.14(b)).

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

7:7E-8.11 Public [access to the waterfront] **Access to the Waterfront**

(a) (No change.)

(b) Coastal development adjacent to all coastal waters, including both natural and developed waterfront areas, shall provide permanent

perpendicular and linear access to the waterfront to the maximum extent practicable, including both visual and physical access. Development that limits public access and the diversity of waterfront experiences is discouraged.

1.-6. (No change.)

7. Development within the Hudson River Waterfront Special Area shall conform with the additional requirements of [7:7E-3.46] N.J.A.C. 7:7E-3.48.

8. **Development along Raritan Bay within Monmouth County shall be consistent with the Bayshore Waterfront Access Plan (Monmouth County Planning Board and the Trust for Public Land for NJDEP, 1987).**

9. **Development elsewhere in the Coastal Zone shall conform with any municipal, county or regional waterfront access plan, provided the plan is consistent with the Rules on Coastal Zone Management.**

10. **The Department may require some or all of the public access portion of a site to be dedicated for public use through measures such as conservation easements.**

[8.-9.]11.-12. (No change in text.)

(c) (No change.)

7:7E-8.12 Scenic [resources and design] **Resources and Design**

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

(d) **In all areas, except the Northern Waterfront Region and the Delaware River Region, new coastal development adjacent to a waterway, beach, dune or boardwalk and higher than 15 feet in height measured from the existing grade of the site or boardwalk shall:**

1. **Provide an open view corridor perpendicular to the water's edge in the amount of 30 percent of the frontage along the waterfront where an open view currently exists;**

2. **Be separated from either the beach, dune or boardwalk, whichever is further inland, by a distance equal to two times the height of the structure. However, exceptions may be made for infill sites within existing commercial areas along a public boardwalk where the proposed use is commercial and where this set-back requirement may be visually incompatible to the existing character of the area; and**

3. **Dedicate, at a minimum, one-half of the preserved open space parallel to the shore for public use.**

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

7:7E-8.13 Buffers and [compatibility of uses] **Compatibility of Uses**

(a) (No change.)

(b) Development shall be compatible with adjacent land and water uses to the maximum extent practicable.

1. (No change.)

2. A specific policy for buffers around wetlands may be found at N.J.A.C. [7:7E-3.27] 7:7E-3.28.

[7:7E-8.14 Solid waste

(a) "Solid waste" shall mean garbage, refuse, and other discarded materials from industrial, commercial and agricultural operations and from domestic and community activities, and shall include all other waste materials including liquids, except for liquids which are treated in public sewage treatment plants and except for solid animal and vegetable wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms (N.J.S.A. 13:1E-1 et seq.).

(b) Coastal development shall recover material and energy from solid waste, to the maximum extent practicable, as required by the New Jersey Solid Waste Management Act (N.J.S.A. 13:e-1 et seq.) and the Federal Resource Conservation and Recovery Act U.S.C. 6901 et seq. If resource and energy recovery are infeasible solid waste shall be handled and disposed of in a manner consistent with the standards of the Department's Division of Waste Management.

(c) Residential developments of over 99 units and all commercial and industrial developments which generate identifiable recyclable waste products, shall develop and implement a source separation and recycling plan to include collection methods and schedules, unless it can be demonstrated that such plans are not feasible. Demonstration of planned participation in an existing municipal or county recycling program is required for single family detached developments and shall meet the above requirement for other developments.

(d) Rationale: See the OAL Note at the beginning of this subchapter.

7:7E-8.15 Energy conservation

(a) "Energy Conservation" is the use of construction and siting techniques which minimize the amount of non-renewable energy used by a facility and maximize the productivity of the energy that is used.

(b) Coastal development shall incorporate energy conservation techniques and alternative sources of energy, including passive and active solar power and wind turbines, to the maximum extent practicable.

1. For all high rise construction (as defined at N.J.A.C. 7:7E-7.2(h) and for commercial and industrial construction costing \$1,000,000 or more, the technical and economic feasibility of employing such measures shall be evaluated in an energy audit prepared by the applicant. An accompanying plan shall specify the energy conservation techniques and alternative sources of energy to be utilized as well as anticipated energy requirements for space heating, cooling, ventilation and lighting, industrial processes and other uses.

2. New buildings shall be situated and designed so that they do not block solar access to existing solar collectors more than 20 percent of the time from 9 A.M. to 3 P.M. between December 21 and February 2.

3. Paragraph (b)1 and 2 above shall not apply in municipalities which have energy conservation ordinances consistent with New Jersey Department of Energy standards.

(c) Rationale: See OAL Note at the beginning of this subchapter.]

[7:7E-8.16] 7:7E-8.14 Traffic

(a) (No change.)

(b) Coastal development shall be designed [and], located and operated in a manner to cause the least possible disturbance to traffic systems.

1. **Alternative means of transportation, that is, public and private mass transportation facilities and services, shall be considered and, whenever feasible, incorporated into the design and management of a proposed facility, to reduce the number of individual vehicle trips generated as a result of the facility.**

(c) When traffic systems are disturbed by approved development, the necessary design modifications or **funding contribution toward an area wide traffic improvement** shall be prepared and implemented in conjunction with the coastal development, and in a manner which is satisfactory to the New Jersey Department of Transportation and **any regional transportation agencies.**

(d) Development which will generate traffic in excess of capacity Level D is discouraged. **A developer shall undertake mitigation or other corrective measures as may be necessary so that the traffic levels at any affected intersection remain at capacity Level D or better.** A developer may, by incorporating design modifications or by contributing to the cost of traffic improvements, be able to address traffic problems resulting from the development, in which case development would be conditionally acceptable. The determinations of traffic levels which will be generated will be made by the New Jersey Department of Transportation.

(e) **Coastal development shall provide sufficient on-site and/or off-site parking for its own use. In general, existing on-street parking spaces along public roads cannot be credited as off-site parking provided for a project. All off-site parking facilities shall be located either in areas within reasonable walking distance to the development or areas identified by any local or regional transportation plans as suitable locations. All off-site parking facilities must also comply with the standards relevant to parking facilities specified at N.J.A.C. 7:7E-7.5, Transportational Use Policies, where applicable.**

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

[7:7E-8.17 Wet soils and high permeability moist soils

(a) "Wet soils and high permeability moist soils" are soils with a depth of seasonal high water table less than, or equal to, three feet, unless the soils are loamy sand or coarser, in which case they are soils with a depth to seasonal high water table less than, or equal to, four feet.

(b) Development shall avoid portions of a site which consists of wet or high permeability moist soils, to the maximum extent prac-

ticable. Where construction is permitted on wet or high permeability moist soils, the following conditions shall apply:

1. Basements are prohibited;
2. Effective engineering techniques, including excavating organic substrates and backfilling with less compressive sediments, short-bore piles, special footings and floating slabs, are used to ensure the stability of foundations and protect them from movement. Techniques that minimize interference with natural ground and surface water movement, such as short-bore pile and suspended slab techniques, are encouraged;
3. The air spaces beneath ground-floor slabs are adequately ventilated, using mechanical ventilation, if necessary;
4. The stability of roads and paved areas assured, using techniques such as removal of compressible sediments and replacement with a firmer substrate and thicker than normal road base;
5. Subsurface pipes are stable and waterproofed to avoid contamination of groundwater, using dewatering of trenches during construction, extra pipe base thickness, waterproof gaskets, sealed joints and other techniques as necessary;
6. Porous concrete is prohibited, although other porous pavements such as lattice concrete or gravel are acceptable;
7. The lowering of the water table by pumping that would disturb adapted vegetation is prohibited;
8. Detention basins, swales and other runoff retention and groundwater recharge areas are discouraged in soils with a seasonal high water table between 1 1/2 feet and three feet, although limited swales may be acceptable on a case-by-case basis (see N.J.A.C. 7:7E-8.7). Runoff retention and groundwater recharge areas are prohibited in soils with a seasonal high water table of 1 1/2 or less;
9. Placement of fill is limited to areas where structures or pavement will be placed; and
10. The development is designed, to the maximum practicable, to concentrate development on portions of the site where the soils are least permeable (fine soils) and where depth to seasonal high water table is greatest.]

[7:7E-8.18] **7:7E-8.15 Fertile [soils] Soils**

(a) "Fertile soils" are soils that have Agricultural Capability Ratings, as defined by the United States Department of Agriculture, Soil Conservation Service, in the National Cooperative Soil Surveys of I, II, IIIe [and] with a K value of less than 0.20, [and] IIIw if well drained, or Woodland Suitability Rating of 1.

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

[7:7E-8.19] **Flood prone areas**

(a) "Flood prone areas" include both delineated flood hazard areas and areas flooded by non-delineated streams. Flood hazard areas around rivers, creeks and streams are being delineated by the Department under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.), and by the Federal Emergency Management Agency (FEMA). The Flood Hazard Area Control Act mandates DEP to "delineate as flood hazard areas, areas as in the judgment of the Department, the improper development and use of which would constitute a threat to the safety, health and general welfare from flooding" (N.J.S.A. 58:16A-52). The Act also regulates "the area which would be inundated by the 100-year design flood of any non-delineated stream". Where Flood Hazard Areas have been delineated by both the Department and FEMA, the Department delineations shall be used.

1. Flood hazard areas around water bodies other than rivers, creeks and streams are delineated by FEMA. Where flood hazard areas have been delineated by neither FEMA nor DEP, the 10-foot contour line shall be used as the inland boundary of the flood hazard area. The seaward boundary shall be the mean high water line.

2. "Floodway" is defined as "the channel of natural stream and portions of the flood hazard area adjoining the channel, which are reasonably required to carry and discharge the flood water for flood flow of any natural stream" (N.J.S.A. 58:16A-51). Floodways are being delineated by the Department (see Figure 28).

3. A complete list of streams where the Department has delineated the flood hazard area can be found in the N.J.A.C. 7:13-1.11.

(b) Policy relevant to flood hazard areas is as follows:

1. Dedication of undeveloped flood hazard areas for purposes of public open space is encouraged, especially where such areas are designated to the New Jersey Wild and Scenic Rivers System.

2. Certain land uses are prohibited, under the Flood Hazard Area Control Act and rules, in the floodway portion of fluvial flood hazard areas, including uses such as placing, depositing or dumping solid wastes on the delineated floodways; processing, storing or disposal of pesticides, domestic or industrial wastes, radioactive materials, petroleum products or hazardous materials; erection of structures for occupancy by humans or livestock, or kennels for boarding of domestic pets; and storage of materials or equipment, or construction of septic tanks for residential or commercial use (see N.J.A.C. 7:13-1.2).

i. Not affected by this policy are hazard-free activities such as recreation, agriculture, solid conservation projects and similar uses which are not likely to cause obstructions, undue pollution, or intensify flooding.

ii. According to N.J.A.C. 7:13-1.4(c), any lawful, pre-existing prohibited uses may be maintained in a delineated floodway provided that if expanded or enlarged, they do not increase the flood damage potential. Property owners in delineated floodways may rebuild damaged structures, providing that any expansion or enlargement will not increase the flood damage potential.

3. Most land uses are also regulated, under the State Flood Hazard Area Control Act and rules, in the fluvial flood fringe. Structures for occupancy by humans are conditionally acceptable provided that the first habitable elevation is one foot above the 100-year flood prone line established by HUD Flood Insurance Maps, and the structure will not increase the flood damage potential, by obstructing flood waters.

4. Construction acceptable in flood hazard areas must conform with applicable flood hazard reduction standards, as adopted by the Federal Insurance Administration in HUD (Federal Register, Vol. 41, No. 207, Part 11, October 26, 1976), as amended.

5. In river areas designated as components of the New Jersey Wild and Scenic Rivers System, land uses are regulated or prohibited in accordance with N.J.A.C. 7:28-1.1 et seq. including special regulations adopted for a particular river, or sections thereof, upon designation to the system.

(c) Development in areas subject to fluvial flooding must conform with the Flood Hazard Area Control Act and rules adopted thereunder, at N.J.A.C. 7:13.

(d) In flood hazard areas subject to tidal flooding, the following policies apply.:

1. Residential development, including hotels and motels, is prohibited in areas designated as Coastal High Hazard Areas (V zones) on Federal Flood Insurance Rate Maps. Commercial development which is not related to beach use and tourism is discouraged in the Coastal High Hazard Area.

2. All permanent structures shall be set back a minimum of 50 feet from oceanfront shore protection structures, including bulkheads, revetments and seawalls, but excluding jetties and groins.

3. Construction acceptable in other flood hazard areas subject to tidal flooding must conform with applicable Federal flood hazard reduction standards as found at 44 CFR 60 and in the Uniform Construction Code (N.J.S.A. 52:27D-1 et seq.).

(e) In river areas designated as components of the New Jersey Wild and Scenic Rivers system, land uses are regulated or prohibited in accordance with N.J.A.C. 7:38-1.1 et seq. including special regulations adopted for a particular river, or sections thereof, upon designation of the system.

(f) Rationale: See the OAL Note at the beginning of this subchapter.]

[7:7E-8.20] **7:7E-8.3 Noise [abatement] Abatement**

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

## (a)

**DIVISION OF COASTAL RESOURCES****Coastal Growth Ratings: Western Ocean County  
Pre-Proposed Amendment: N.J.A.C. 7:7E-5.3**

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-1 et seq.; 13:9B-1 et seq.; 13:19-1 et seq.; 13:9A-1 et seq. and 12:5-1 et seq.

DEP Docket Number: 008-90-03.

Pre-Proposal Number: PPR 1990-6.

**Take notice** that the Department of Environmental Protection is contemplating a proposed amendment to N.J.A.C. 7:7E-5.3 which would revise the coastal growth rating of sections of Manchester Township, Ocean County. Specifically, the southwestern portion of what is now referred to as the "Western Ocean County" region, currently designated as an Extension Region, would be redesignated as a Limited Growth Region. The effect of such an amendment would be to decrease the development potential of a roughly 7,500 acre area located entirely within Manchester Township. This area is also a part of the Pinelands National Reserve.

This redesignation would reinforce the existing coastal policy at N.J.A.C. 7:7E-3.42 to support the Pinelands Comprehensive Management Plan for the Pinelands National Reserve. It would also serve to protect the habitat of threatened and endangered species known to exist within the area, such as the corn snake (*Elaphe guttata*), pine snake (*Pituophis melanoleucus*), pine barrens tree frog (*Hyla Anersoni*), and Barratt's sedge (*Carex barrattii*).

This notice of pre-proposal is being published in order to obtain the comment of interested persons on the Department's contemplated rulemaking. **Interested persons** may submit, in writing, data, views, proposed regulatory language, or arguments relevant to this pre-proposal by June 1, 1990 to:

James M. Murphy, Esquire  
Division of Regulatory Affairs  
Department of Environmental Protection  
CN 402  
Trenton, New Jersey 08625

In particular, the Department is seeking written comments addressing the following issues relating to this contemplated rulemaking:

1. Possible adverse effects on local economies;
2. The effect on local residents;
3. Adverse impacts on currently planned development;
4. Effects on the quality of life in the area and in New Jersey; and
5. Environmental benefits.

**Full text** of the contemplated rulemaking is as follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

7:7E-5.3 Coastal growth rating

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

[(f) The Western Ocean County Region includes those portions of Ocean County west of the Garden State Parkway and south of State Highway 37, and is designated an Extension Region.]

**(f) The Western Ocean County Region includes those portions of Manchester Township south of State Highway 37 to the west of Alexander Avenue and south of the Central Jersey Railroad parallel to State Highway 37, including the railroad right-of-way, to the east of Alexander Avenue, and is designated a Limited Growth Region.**

**(g) The Central Ocean County Region includes those portions of Berkeley Township south of State Highway 37 and west of Garden State Parkway, portions of Manchester Township south of State Highway 37, north of the Central Jersey Railroad and east of Alexander Avenue and all of Lakehurst Borough within the Coastal Zone, and is designated an Extension Region.**

Redesignate (g)-(o) as (h)-(p) (No change in text.)

**HEALTH**

## (b)

**DRUG UTILIZATION REVIEW COUNCIL****List of Interchangeable Drug Products****Proposed Amendments: N.J.A.C. 8:71**

Authorized By: Drug Utilization Review Council,  
William Rickett, Secretary.

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

Proposal Number: PRN 1990-183.

A **public hearing** concerning these proposed amendments will be held on May 8, 1990 at 2:00 P.M. at the following address:

Department of Health  
Room 804, 8th Floor  
Health-Agriculture Bldg.  
Trenton, New Jersey 08625-0360

Submit written comments by May 16, 1990 to:

Thomas T. Culkin, Pharm.D., M.P.H.  
Executive Director  
Drug Utilization Review Council, Room 807  
New Jersey Department of Health  
CN 360  
Trenton, N.J. 08625-0360  
609-984-1304

The agency proposal follows:

**Summary**

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

For example, the proposed acetylcysteine solutions could be used as a less expensive substitute for Mucomyst, a branded prescription medicine. Similarly, the proposed griseofulvin tablets could be substituted for the more costly branded product, Fulvicin P/G.

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

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

**Social Impact**

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

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

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

**Economic Impact**

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

Some of the economies occasioned by these amendments accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. A 1988 estimate of average savings per substituted Medicaid prescription was \$7.31. However, the number of prescriptions that will be newly substituted due to

these proposed amendments cannot be accurately assessed in order to arrive at a total savings.

**Regulatory Flexibility Analysis**

The proposed amendments impact many small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., specifically, over 1500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

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

Full text of the proposed amendments follows:

Acetylcysteine solution 10%, 20%	Hollister-Stier
Albuterol tabs 2, 4 mg	Mylan
Aspirin/codeine tabs 30/325, 60/325	Lee
Atenolol tabs 50, 100 mg	Cord
Bendroflumethiazide/rauwolfia 4/50 mg	Anabolic
Carbinoxamine/pseudoephedrine 4/60 tabs	Anabolic
Cephalexin caps 250, 500 mg	Squibb
Cephalexin for susp. 125, 250 mg/5 ml	Squibb
Choline mag. salicylate tabs 1 g	Sidmak
Choline mag. salicylate tabs 500, 750 mg	Sidmak
Clemastine fumarate syrup 0.5 mg/5 ml	Copley
Erythromycin topical soln 2%	PharmBasics
Fenopropfen tabs 600 mg	Mutual
Griseofulvin ultramicro. tabs 165, 330 mg	Sidmak
Ibuprofen tabs 400, 600 mg	Danbury
Imipramine tabs 10, 25, 50 mg	Mutual
Isoetharine inhalation 0.08, 0.17, 0.25, 1%	Dey
Isoproterenol inhalation 0.5%	Dey
Lorazepam tabs 0.5, 1, 2 mg	Mutual
Meprobamate tabs 400 mg	Lee
Metaproterenol inhal. 0.4, 0.6, 5%	Dey
Methyldopa/HCTZ tabs 250/15, 250/25	Lederle
Morphine sulfate ER tabs 30 mg	Roxane
Morphine sulfate soln 20 mg/ml	Roxane
Nifedipine caps 20 mg	Cord
Novaphed-A caps substitute	Ferndale
Phenylephrine/PPA/guaifenesin liq.	Pegasus
Potassium Cl ER tabs 8 mEq	Mylan, Upsher-Smith
Propranolol tabs 60 mg	Lederle
Racpinephrine inhalation 2.25%	Dey
Ru-Tuss tablets substitute	Anabolic
Rynatan tabs substitute	Sidmak
Rynatuss Ped. Susp. substitute	Ferndale
Rynatuss tabs substitute	Ferndale, Sidmak
Salsalate tabs 500, 750 mg	Lee, Sidmak
Salsalate tabs 500, 750 mg	Upsher-Smith
Sodium fluoride tabs 1.1, 2.2 mg	Lee
Sodium polystyrene sulfonate powder	PharmBasics
Sulindac tabs 150, 200 mg	Lederle, Mylan
Theophylline soln 80 mg/15 ml	Ferndale
Triamterene/HCTZ caps 50/25	Cord
Triamterene/HCTZ tabs 37.5/25	Cord
Trimethobenzamide caps 250 mg	Anabolic
Trimethobenzamide supp 100, 200 mg	G&W
Valproic acid syrup 250 mg/5 ml	Copley

**HIGHER EDUCATION**

(a)

**BOARD OF HIGHER EDUCATION**

**Immunization Requirements Exemptions**

**Proposed Amendment: N.J.A.C. 9:2-14.2**

Authorized By: Board of Higher Education,  
T. Edward Hollander, Chancellor and Secretary.  
Authority: N.J.S.A. 18A:61D-1.  
Proposal Number: PRN 1990-173.

Submit comments by May 16, 1990 to:  
Grey J. Dimenna, Esq.  
Administrative Practice Officer  
Department of Higher Education  
20 West State Street  
CN 542  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

This proposed amendment supplements a new rule adopted in the April 2, 1990 New Jersey Register at 22 N.J.R. 0000 regarding immunization requirements for college and university students. The amendment adds to the exemption categories allowed under this program by exempting students who attended elementary or secondary schools in other states with immunization requirements and enforcement of such requirements which are equal to or greater than New Jersey's.

**Social Impact**

Currently, those students who attended elementary or secondary school in New Jersey are exempt from these rules due to immunization requirements for school children in New Jersey. The proposed amendment will permit the exemption from the immunization requirements of those students attending New Jersey colleges and universities from other states when the immunization requirements and enforcement of those requirements in such states are equal to or exceed those found within New Jersey.

**Economic Impact**

The proposed amendment will lessen the administrative costs to institutions within New Jersey and to out-of-State students attending New Jersey institutions of higher education by imposing the same exemption requirements on students from states with similar or greater immunization requirements for elementary and secondary school children. This extension will lessen the number of students affected by the rules without weakening the immunized proportion of the student population.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment contains provisions regarding the exemption of out-of-State students from immunization requirements under certain circumstances.

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

9:2-14.2 Exemptions

(a) (No change.)

(b) An exemption may be made, at the discretion of an institution, for the following categories of students:

1. Each student born before 1957;
2. Each student who presents proof of having attended an elementary or secondary school located in New Jersey (such as the school record of immunization, transcript, or diploma);
3. Each student enrolled in a program for which students do not congregate, whether for classes or to participate in institution sponsored events, such as those in programs for individualized home study or conducted solely via electronic media[.];
4. Each student who presents proof (such as the school record of immunization, transcript, or diploma) of having attended an elementary or secondary school located in another state approved by the State

Department of Health as a state which has immunization requirements and enforcement of such requirements which are equal to or greater than New Jersey's.

(c) (No change.)

(a)

## BOARD OF HIGHER EDUCATION

### State Colleges

#### Institutional Promotional Policies; Exemption From Limitations for Professorial Classifications; Institutional Plans

#### Proposed New Rules: N.J.A.C. 9:6-3.7, 3.9 and 9:6-7

Authorized By: Board of Higher Education,

T. Edward Hollander, Chancellor and Secretary.

Authority: N.J.S.A. 18A:64-6(h) and N.J.S.A. 18A:3-14(h).

Proposal Number: PRN 1990-172.

Submit comments by May 16, 1990 to:

Grey J. Dimenna, Esq.  
Administrative Practice Officer  
Department of Higher Education  
20 West State Street  
CN 542  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The Board of Higher Education is statutorily authorized to promulgate rules prescribing procedures and practices regarding promotional and tenure policies at New Jersey's State colleges. Under current policy, the Board of Higher Education limits the salary proportion of State colleges' base budget to no more than 73 percent of the total of the base. In addition, the rules restrict the proportion of faculty in the senior ranks at the State colleges to no more than 60 percent of the total faculty at each college. The proposed new rules at N.J.A.C. 9:6-7 would provide a procedure by which a State college board of trustees could prepare a comprehensive institutional plan which, upon acceptance, would transfer to the State college board of trustees for an initial five-year period authority over the proportion of base budget that may be used for salaries. Proposed N.J.A.C. 9:6-3.9 would permit a State college board of trustees to seek an exemption from the limitation on the proportion of faculty in the senior ranks. Proposed N.J.A.C. 9:6-3.7 would place upon each State college board of trustees the responsibility to maintain a promotion policy which clearly supports the mission of the college and considers the impact of the policy on current and future students of the college. The proposed new rules in N.J.A.C. 9:6-3 result in the recodification of N.J.A.C. 9:6-3.7 as N.J.A.C. 9:6-3.8, and of N.J.A.C. 9:6-3.8 through 3.16 as N.J.A.C. 9:6-3.10 through 3.18.

#### Social Impact

The proposed new rules would make it the responsibility of each State college board of trustees to prepare and submit a comprehensive institutional plan that clearly delineates institutional goals and priorities in order to guide the development and expenditure of the college's budget, as well as the deployment of its human resources. Each institutional plan would encompass a five-year period. The Board of Higher Education's approval of the plan would transfer to the State college board of trustees authority over the proportion of the base budget that may be used for salaries. The proposed new rules would also enable a State college board of trustees to gain exemption from the limitation on the proportion of faculty in the senior ranks.

#### Economic Impact

The proposed new rules do not contain direct regulatory requirements or impose any fees and, therefore, will not have any direct economic impact on the citizens of the State. It is anticipated that for those State colleges whose institutional plan is approved, the proposed new rules may increase the salary proportion of the base above the current limit of 73 percent and may increase the proportion of faculty in the senior ranks above 60 percent. Such increases might, but would not necessarily, result in an increase in State funding for the colleges.

#### Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these new rules will not impose reporting, recordkeeping, or other compliance requirements on small businesses because these rules impact upon State colleges, all of which fail to qualify as small businesses as defined in the Regulatory Flexibility Act. The rules provide a procedure by which a State college board of trustees may submit an institutional plan, which, if accepted, empowers the board of trustees to determine the salary proportion of the base budget and the proportion of faculty in the senior ranks.

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

#### 9:6-3.7 Institutional promotion policies

(a) Each board of trustees shall maintain a promotion policy which clearly supports the mission of the college and which considers the impact on current and future students of the college. The promotion policy shall constitute a companion to the comprehensive five year institutional plan (see N.J.A.C. 9:6-7) and shall be submitted to the Board of Higher Education Budget Committee along with the institutional plan and budget request. The policy shall include the following elements:

1. Criteria for promotion for each faculty rank;
2. A description of the current procedures for making promotion decisions;
3. A description of the impact of implementing the promotion policy with specific reference to the mission of the college and the impact on its students. Such description shall include the projected distribution by rank and tenure of the teaching faculty for each year over a 10 year period. It should also include an analysis of such distribution for each year following the effective date of this regulation and prior to the annual promotion policy submission to the Board of Higher Education;
4. A budgetary impact statement indicating the sources of funding for implementing the promotion policy of the college;
5. A statement of how the promotion policy will impact upon the recruitment, enrollment and retention of students at the college;
6. A statement of how the policy will affect new program development and current program update at the college;
7. A statement of how the policy will impact upon productivity of the faculty including but not limited to such issues as teaching, scholarly achievement, new courses, and advisement;
8. A plan for the inclusion of affirmative action considerations in the promotion policy; and
9. A plan for utilizing qualitative assessment of faculty performance including the quality of teaching.

(b) The Chancellor shall review the implementation of the promotion policy of the college annually and shall also complete a comprehensive review at five year intervals.

Recodify existing 9:6-3.7 as 9:6-3.8 (No change in text.)

#### 9:6-3.9 Exemption from limitations for professorial classifications

(a) A State college board of trustees may seek exemption from the limitation on senior rank set forth in N.J.A.C. 9:6-3.8(a), based upon the criteria set forth in N.J.A.C. 9:6-3.7, by including a specific exemption request along with the submission of its institutional promotion policy to the Chancellor.

(b) An exemption, if granted, shall be effective upon approval of the institutional promotion policy by the Board of Higher Education.

(c) Upon review of the progress of the college in implementing its plan at the time of five-year comprehensive review, the Chancellor shall make a recommendation to the Board of Higher Education whether to transfer authority on such decisions to the board of trustees, to renew the exemption for another five years or to reimpose the limitation on the ranks of associate professor and above set forth in N.J.A.C. 9:6-3.8.

Recodify existing 3.8 through 3.16 as 3.10 through 3.18 (No change in text.)

## SUBCHAPTER 7. INSTITUTIONAL PLANS

### 9:6-7.1 Scope and purpose

This subchapter governs the process for the development of and the elements to be included in the institutional plans to be submitted to the Board of Higher Education by the State colleges.

**9:6-7.2 Use of the plan**

Each State college shall develop and prepare a comprehensive institutional plan that clearly delineates institutional goals and priorities in order to guide the development and expenditure of the college's budget as well as the deployment of its human resources. The plan shall make substantial connections between academic and financial planning. The plan's greatest utility is expected to be its foundation for board of trustee decisions, including the development of the annual budget request which must be congruent with the plan. The plan shall also be used to inform the Department and Board of Higher Education in their decisions and recommendations regarding budget, new degree programs, capital facilities, etc.

**9:6-7.3 Planning timelines**

Each college shall develop and maintain a comprehensive five-year institutional plan. The board of trustees shall determine whether the planning process shall be based on sequential five-year plans with annual progress reports or on rolling five-year plans that are modified annually.

**9:6-7.4 Elements of the institutional plan**

(a) The plan approved by the board of trustees shall include the following:

1. The college's mission statement;
2. A foundation, where appropriate, based upon campus history, tradition, special strengths and characteristics and view for the future, with references to service area and population to be served;
3. An environmental assessment that incorporates trend data, identifies external and internal forces, and expresses how these forces affect or relate to strengths, areas to be strengthened or curtailed, opportunities for instruction, research and service, competitive advantage and challenges to institutional stability and integrity;
4. Trends, goals and outcomes in the following:
  - i. Enrollment management, both recruitment and retention (with special attention to the needs of the people of the State);
  - ii. Major curriculum changes anticipated (undergraduate, graduate and continuing education);
  - iii. Planned allocations in the areas of library, instructional equipment, and other non-salary categories that support the academic program;
  - iv. Campus life, including human relations and student services;
  - v. Campus support services;
  - vi. Planned allocations for information systems, both academic and administrative computing;
  - vii. Human resources, including total salary expenditures, faculty staffing by rank and tenure, and administrative computing;
  - viii. Capital facilities, including on-going maintenance, deferred capital renewal and replacement, on-going capital renewal and replacement, and new facilities;
  - ix. Public service/outreach;
  - x. Financing and resource development; and
  - xi. Organizational framework.

**9:6-7.5 Development, approval and submission of plans and periodic progress reports**

The board of trustees shall maintain an institutional plan. The plan shall incorporate a principle of consultation with the college community. The initial institutional plan under the transition to autonomy must be submitted to the Chancellor no later than July 1, 1990. Thereafter, the plan and annual progress reports shall be submitted to the Chancellor no later than January 10th in order to coincide with the start of the Board of Higher Education's annual budget development process.

**9:6-7.6 Conditions for the transfer of authority over base budget allocation to boards of trustees**

(a) Upon receipt of a fiscal plan that supports the mission of the college and its institutional plan the Chancellor shall suspend the Board of Higher Education's salary/non-salary base budget proportion policy for a period of five years.

(b) To maintain the suspension, the board of trustees must include in its annual budget submission a report on the progress of achieving the goals of the plan, explaining any deviation.

(c) Upon review of the performance of a State college at the end of the five-year suspension period, the Chancellor shall make a rec-

ommendation to the Board of Higher Education whether to transfer authority for such decisions to the college's board of trustees, to renew the suspension of the policy for another five years or to reimpose the salary limitation policy.

**HUMAN SERVICES****(a)****DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES****Pharmaceutical Services Manual Appendices B, C, D, E****Proposed Amendments: N.J.A.C. 10:51-1, Appendices B, C, D and E**

Authorized By: William Waldman, Acting Commissioner,  
Department of Human Services.

Authority: N.J.S.A. 30:4D-6b(6), 30:4D-7, 7a, 7b, 7c; 30:4D-12; 30:4D-22, 24.

Agency Control Number: 89-P-41.

Proposal Number: PRN 1990-198.

Submit comments by May 16, 1990 to:

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

The agency proposal follows:

**Summary**

The Division of Medical Assistance and Health Services is updating and revising Appendices B, C, D and E of N.J.A.C. 10:51-1, the Pharmaceutical Services Manual. Appendix B is the list of non-legend (over-the-counter) drugs for which Medicaid will reimburse pharmaceutical providers. Appendix C is a list of hypodermic syringes and/or needles. Appendix D is a list of legend devices, which are covered by both the Medicaid and PAAD (Pharmaceutical Assistance to the Aged and Disabled) programs. Appendix E is a list of protein replacements.

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

**Social Impact**

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

**Economic Impact**

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

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

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

**Regulatory Flexibility Analysis**

The proposed amendments impact on small businesses as defined in the Regulatory Flexibility Act (N.J.S.A. 52:14B-16 et seq.). However, the proposed amendments do not add any additional recordkeeping, reporting, or other compliance requirements. Pharmaceutical providers are already required to maintain records of pharmaceuticals stocked and dispensed, including the NDC number. Pharmaceutical providers that participate in the Medicaid and/or PAAD programs are required to keep sufficient records to fully disclose the name of the recipient to whom the service was rendered, the date the service was rendered, and the nature

and extent of each such service rendered, and any additional information required by regulation (reference is made to N.J.S.A. 30:4D-12). Therefore, regulatory flexibility analysis is not required.

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

OAL NOTE: The following is a list of proposed additions to Appendix B, the text of which is not published in the New Jersey Administrative Code. A copy of this appendix may be obtained from the Division of Medical Assistance and Health, CN 712, Trenton, New Jersey 08625.

SUMMARIZED LISTING OF ADDITIONS  
APPENDIX B

General Non-Legend

<u>Product</u>	<u>Size</u>	<u>R.U.</u>	<u>N.D.C.</u>
Acetaminophen 500mg Caps Generic	100	CAP	00999-0520-01
Antiminth Suspension	60 cc	CC	00069-6400-23
Aveeno Bar (Dry)	3 oz	EACH	20494-0034-00
Aveeno Bar (Medicated)	3 oz	EACH	20494-0034-05
Aveeno Bar (Regular)	3 oz	EACH	20494-0034-10
Aveeno Bath	240 gm	EACH	20494-0034-40
Aveeno Bath	480 gm	EACH	20494-0034-30
Aveeno Lotion	240 cc	EACH	20494-0034-50
Aveeno Shower and Bath Oil	240 cc	EACH	20494-0034-53
Bisacodyl Suppository Generic	12	SUPP	00999-0513-01
Bisacodyl Tablets Generic	100	TAB	00999-0512-01
Cal Carb-HD	30	EACH	00224-0427-30
Celluvisc Lub. Opth. Solution	30	EACH	00023-4554-30
Citrucel Powder	210 gm	EACH	00068-0419-07
Citrucel Powder	300 gm	EACH	00068-0419-10
Co-Advil Caplets	20	CAP	00573-0575-20
Co-Advil Caplets	48	CAP	00573-0575-30
Co-Advil Caplets	100	CAP	00573-0575-40
Docusate Sod. 100mg Cap Generic	100	CAP	00999-0514-01
Docusate Sod. 250mg Cap Generic	100	CAP	00999-0515-01
Docusate Sod. Syrup 20mg/5ml Generic	480 cc	CC	00999-0516-01
Fiberall Powder (Natural)	300 gm	EACH	00083-0270-69
Fiberall Powder (Orange)	300 gm	EACH	00083-0290-69
Fiberall Powder (Natural)	450 gm	EACH	00083-0270-70
Fiberall Powder (Orange)	450 gm	EACH	00083-0290-70
Fiberall Tablets	18	TAB	00083-0310-18
Fiberall Wafers	14	WAFER	00083-4030-86
Fibrad Powder	414 gm	EACH	70074-0504-35
Fototar Cream 2%	90 gm	EACH	00163-0526-03
Fototar Cream 2%	480 gm	EACH	00163-0526-05
Hydrocortisone Cream 5% Generic	15 gm	EACH	00999-0504-01
Hydrocortisone Cream 5% Generic	30 gm	EACH	00999-0504-02
Hydrocortisone Cream 5% Generic	120 gm	EACH	00999-0504-03
Hydrocortisone Cream 5% Generic	480 gm	EACH	00999-0504-04
Hydrocortisone Lotion 5% Generic	30 cc	EACH	00999-0505-01
Hydrocortisone Lotion 5% Generic	60 cc	EACH	00999-0505-02
Hydrocortisone Lotion 5% Generic	120 cc	EACH	00999-0505-03
Hydrocortisone Oint. 5% Generic	30 gm	EACH	00999-0506-01
Hydrocortisone Oint. 5% Generic	120 gm	EACH	00999-0506-02
Ibuprofen 200mg Tablets Generic	100	TAB	00999-0509-01
Imodium A-D Liquid	120 cc	CC	00045-0293-04
Lipo-Nicin 300mg Capsules	100	CAP	00248-1850-01
Mag-Tab S.R.	60	TAB	00013-4201-16
Mag-Tab S.R.	100	TAB	00013-4201-17
Naldecon Senior DX Liquid	120 cc	CC	00015-5659-01
Naldecon Senior DX Liquid	480 cc	CC	00015-5659-02
Naldecon Senior EX Liquid	120 cc	CC	00015-5658-01
Naldecon Senior EX Liquid	480 cc	CC	00015-5658-02

Diabetic Testing Material

<u>Product</u>	<u>Size</u>	<u>R.U.</u>	<u>N.D.C.</u>
Glucoscan Test Strips	50	EACH	53885-0031-50
Glucoscan Test Strips	100	EACH	53885-0073-10
One Touch Test Strips	50	EACH	53885-0198-50
Soft Touch Lancets	100	EACH	50924-0585-10
Soft Touch Lancet Device	1	EACH	50924-0580-01

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**HUMAN SERVICES**

Phenaphen Capsules 325mg	1000	CAP	00031-6207-74
Phenergan Decong. Cold Formula	120 cc	CC	00008-0693-02
Phenergan Decong. Cold Formula	240 cc	CC	00008-0693-04
Phenergan DM Cough Formula	120 cc	CC	00008-0694-02
Phenergan DM Cough Formula	240 cc	CC	00008-0694-04
Povidine-Iodine Ointment Generic	30 gm	EACH	00999-0510-01
Povidine-Iodine Ointment Generic	480 gm	EACH	00999-0510-02
Povidine-Iodine Solution Generic	240 cc	CC	00999-0511-01
Povidine-Iodine Solution Generic	480 cc	CC	00999-0511-02
Pseudoephedrine 30mg Tabs Generic	24	TAB	00999-0517-01
Pseudoephedrine 30mg Tabs Generic	100	TAB	00999-0517-02
Pseudoephedrine 60mg Tabs Generic	100	TAB	00999-0518-01
Pseudoephedrine Syrup Generic	120 cc	CC	00999-0519-01
Pseudoephedrine & Triprolidine Syrup Generic	120 cc	CC	00999-0508-01
Pseudoephedrine & Triprolidine Tablets Generic	24	TAB	00999-0507-01
Pseudoephedrine & Triprolidine Tablets Generic	100	TAB	00999-0507-02
Riopan Plus-2 Chewable Tablets	60	TAB	00573-3215-30
Ru-Tuss Expectorant	480 cc	CC	00048-3010-16
Ru-Tuss Liquid	480 cc	CC	00048-1009-16
Step 2 Nit Removal System	60 cc	CC	52761-0652-02

Contraceptive Materials

<u>Product</u>	<u>Size</u>	<u>R.U.</u>	<u>N.D.C.</u>
Today Contraceptive Sponge	3	EACH	00573-3685-10
Today Contraceptive Sponge	6	EACH	00573-3685-20
Today Contraceptive Sponge	12	EACH	00573-3685-30

Insulin Preparations

<u>Product</u>	<u>Size</u>	<u>R.U.</u>	<u>N.D.C.</u>
Insulin Humulin 70/30 U-100	10 cc	CC	00002-8715-01
Insulin Nordisk/Mixtard Human	10 cc	CC	50445-0333-01
Novolin Human NPH U-100	10 cc	CC	00003-1834-10
Novolin 70/30 NPH	10 cc	CC	00003-1837-10
Novolin N Penfill Cartridges	5	CART	00003-1834-15
Novolin R Penfill Cartridges	5	CART	00003-1833-15
Novolin 70/30 Penfill Cartridges	5	CART	00003-1837-15

**SUMMARIZED LISTING OF DELETIONS  
APPENDIX B**

General Non-Legend

<u>Product</u>	<u>Size</u>	<u>N.D.C.</u>
[A.C.N. Tablets	100	00096-0014-11
Abdec Kapseals	100	00071-0371-24
Abdol w/Minerals Capsules	100	00071-0240-24
Accelerase Capsules	60	00052-0391-60
Actol Expectorant	480 cc	00029-1137-34
Actol Expectorant Tablets	100	00029-1138-30
Aludrox Tablets	100	00008-0022-03
Ammonium Chl. Enseals 1gm	100	00002-0112-02
Anafed Syrup	120 cc	00642-0091-04
Bacimycin Ointment	15 gm	00068-0119-42
Betalin-S Elixir	480 cc	00002-2442-05
Betalin-S Tablets 10mg	100	00002-2052-02
Betalin-S Tablets 25mg	100	00002-2059-02
Bewon Elixir	480 cc	00008-0105-01
Bilogen Tablets	100	00052-0371-91
Caladryl w/Hydrocort Cream .5%	15 gm	00071-3030-11
Caladryl w/Hydrocort Lotion	30 cc	00071-3002-13
Calcium Gluc. w/Vit. D Pulvules	100	00002-3130-02
Cebetinic Tablets	60	00009-0756-01
Cetro-Cirose Liquid	480 cc	00082-4129-01
Cevalin Tablets 100mg	100	00002-2045-02
Cevalin Tablets 250mg	100	00002-2060-02
Chel-Iron Liquid	240 cc	00998-8741-08
Chel-Iron Pediatric Drops	60 cc	00998-8742-60

**HUMAN SERVICES**

**PROPOSALS**

Chel-Iron Tablets	100	00998-8743-01
Chlor-Trimeton Expectorant	480 cc	00085-0841-05
Chlorpheniramine Syrup/Purepac	480 cc	00228-1232-16
Combex Kapseals	100	00071-0363-24
Combex Kapseals w/Vitamin C	100	00071-0367-24
Consotuss Liquid	180 cc	00068-0259-06
Coricidin Cough Syrup	120 cc	00085-0375-02
Coricidin Medilets	36	00085-0234-05
Cortaid Cream 0.5%	15 gm	00009-0822-02
Cortaid Cream 0.5%	30 gm	00009-0822-03
Cortaid Lotion 0.5%	60 cc	00009-0932-03
Cortaid Ointment 0.5%	15 gm	00009-0629-02
Cortaid Ointment 0.5%	30 gm	00009-0629-03
Cortril Topical Cream 0.5%	15 gm	00995-3269-40
Coryban-D Syrup	120 cc	00995-3641-87
Cotazym-B Tablets	60	00052-0385-60
Cytoferin Hematinic	100	00046-0705-81
Dermacort Lotion 0.5%	120 cc	00032-6006-74
Dermolate Anal Itch Ointment	30 gm	00085-0435-05
Dermolate Anti-Itch Spray	45 cc	00085-0761-06
Dermolate Scalp Itch Lotion	30 cc	00085-0407-03
Dicalcium Phos. w/Vit. D & Iron	100	00002-0663-02
Diothane Ointment	30 gm	00068-0276-01
Dorbane Tablets	100	00089-0173-10
Dorbantyl Capsules	30	00089-0174-03
Dorbantyl Forte Capsules	100	00089-0178-10
E.T. Chewable Vitamins	60	00003-0183-40
E.T. Chewable w/Iron Vitamins	60	00003-0182-40
Endotussin-NN Syrup	120 cc	00056-0222-04
Endotussin-NN Pediatric Syrup	120 cc	00056-0224-04
Enzypan Tablets	120	00752-0003-13
Ephedrine Sulf. Sol.-Nasal 3%	30 cc	00002-2493-67
Ephedrine Sulf. Syrup (Not USP)	480 cc	00002-2527-05
Ephedrol w/Codeine	480 cc	00002-2327-05
Estomul-M Liquid	360 cc	00089-0921-12
Estomul-M Tablets	100	00089-0193-10
Fedrazil Tablets	100	00081-0444-55
Feminins Tablets	100	00087-0470-01
Feosol-Plus Capsules	100	49692-0943-20
Ferrous Gluc. Pulvules 325mg	100	00002-0644-02
Fluorinse .05%	240 cc	27816-0380-06
Fluorinse .05%	480 cc	27816-0380-07
Fortespan Capsules	100	49692-0955-20
Ganatrex Elixir	480 cc	00068-0321-16
Gastrolyte Packets	6	00075-2900-06
Geriplex Kapseals	100	00071-0382-24
Glysenid Tablets	100	00043-0045-51
Hexa-Betalin Tabs 25mg	100	00002-1045-02
Hycort Cream 0.5%	15 gm	00163-0371-35
Hydrocortisone Cream 0.5%/APC	15 gm	00084-0523-35
Hydrocortisone Cream 0.5%/APC	30 gm	00084-0523-31
Hydrocortisone Cream 0.5%/Biocraft	15 gm	00332-5153-44
Hydrocortisone Cream 0.5%/Biocraft	30 gm	00332-5153-48
Hydrocortisone Cream 0.5%/Bioline	30 gm	00719-5200-52
Hydrocortisone Cream 0.5%/Clay-Park	30 gm	45802-0002-03
Hydrocortisone Cream 0.5%/Clay-Park	120 gm	45802-0002-04
Hydrocortisone Cream 0.5%/Fougera	120 gm	00168-0014-04
Hydrocortisone Cream 0.5%/Fougera	480 gm	00168-0014-16
Hydrocortisone Cream 0.5%/Fougera	30 gm	00168-0014-31
Hydrocortisone Cream 0.5%/Goldline	30 gm	00182-0951-34
Hydrocortisone Cream 0.5%/Goldline	480 gm	00182-0951-45
Hydrocortisone Cream 0.5%/Pharmaderm	30 gm	00462-0014-31
Hydrocortisone Cream 0.5%/Rugby	30 gm	00536-8310-95
Hydrocortisone Cream 0.5%/Rugby	120 gm	00536-8310-97
Hydrocortisone Cream 0.5%/Schein	30 gm	00364-7086-56
Hydrocortisone Cream 0.5%/Schein	120 gm	00364-7086-77
Hydrocortisone Cream 0.5%/Sterimed	30 gm	00188-8267-31
Hydrocortisone Cream 0.5%/URL	30 gm	00677-0711-37
Hydrocortisone Cream 0.5%/URL	120 gm	00677-0711-41
Hydrocortisone Cream 0.5%/Moore	30 gm	00839-5206-49
Hydrocortisone Cream 0.5%/Moore	120 gm	00839-5206-53

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**HUMAN SERVICES**

Hydrocortisone Cream 0.5%/Moore	480 gm	00839-5206-60
Hydrocortisone Cream 0.5%/Three-P	30 gm	46198-0603-11
Hydrocortisone Lotion 0.5%/Bioline	60 cc	00719-5204-54
Hydrocortisone Lotion 0.5%/Bioline	120 cc	00719-5204-56
Hydrocortisone Lotion 0.5%/Clay Park	60 cc	45802-0022-46
Hydrocortisone Lotion 0.5%/Clay Park	120 cc	45802-0022-06
Hydrocortisone Lotion 0.5%/Goldline	60 cc	00182-1364-43
Hydrocortisone Lotion 0.5%/Rugby	60 cc	00536-8330-96
Hydrocortisone Lotion 0.5%/Schein	30 cc	00364-7275-56
Hydrocortisone Lotion 0.5%/Schein	120 cc	00364-7275-77
Hydrocortisone Lotion 0.5%/URL	60 cc	00677-0719-31
Hydrocortisone Oint. 0.5%/Bioline	30 gm	00719-5205-52
Hydrocortisone Oint. 0.5%/Clay Park	30 gm	45802-0012-03
Hydrocortisone Oint. 0.5%/Clay Park	120 gm	45802-0012-04
Hydrocortisone Oint. 0.5%/Fougera	30 gm	00168-0016-31
Hydrocortisone Oint. 0.5%/Pharmaderm	30 gm	00462-0016-31
Hydrocortisone Oint. 0.5%/Rugby	30 gm	00536-8350-95
Hydrocortisone Oint. 0.5%/URL	30 gm	00677-0721-37
Hytone Ointment 0.5%	30 gm	00066-0086-01
Infalyte Powder	4x 6 gm	00018-0837-02
Ipsatol-DM Syrup	120 cc	00369-0092-04
Iron w/Vit. C Tabs (Feramel)	100	00003-0549-50
Kerid Ear Drops	8 cc	00154-1000-08
Kolantyl Gel	360 cc	00068-0381-12
Kolantyl Wafers	36	00068-0387-36
L.A. Formula	210 gm	00224-1802-02
L.A. Formula	420 gm	00224-1802-03
L-Glutavite Capsules	100	50419-0270-10
Livitamin Prenatal Tablets	100	00029-2550-30
Lufa Capsules	100	00053-4651-00
Maalox #2 Tablets	100	00067-0337-67
Medache Tablets	100	00052-0550-91
Mercodol w/Decapryn Syrup	480 cc	00068-0396-16
Methenamine Tabs 500mg/Lilly	100	00002-2020-02
Modane Mild Liquid	480 cc	00013-5143-51
Mol-Iron Chronosules	30	00085-0966-02
Mol-Iron Liquid	480 cc	00085-0005-05
Naldetuss Syrup	480 cc	00015-5607-60
Neo-Polycin Ointment	15 gm	00068-2010-93
Neo-Polycin Ointment	30 gm	00068-2010-01
Niacin Tablets 25mg/Squibb	100	00003-0610-50
Nicospan 400mg	100	00369-2001-01
Novafed Liquid	120 cc	00068-1011-04
Novafed-A Liquid	120 cc	00068-1010-04
Novahistine Melet Tablets	100	00183-0012-02
Novahistine-Fortis Capsules	100	00183-0011-02
Novahistine-LP Tablets	100	00183-0016-02
Nylmerate-II Solution	480 cc	00027-0700-16
Ominal Tablets	100	00482-0103-01
Pabirin Buffered Tablets	100	00043-0019-51
Paladac Liquid	480 cc	00071-1878-17
Paladac w/Minerals Tablets	100	00071-0503-24
Panteric Granules	120 gm	00071-1878-17
Panteric Filmseals 325mg	325 mg	00071-0503-24
Parelixir	180 cc	00034-5640-60
Phenaphen Capsules	100	00031-6207-63
Phenylzin Oph. Sol.	15 cc	00058-0702-15
Polymagma Plain Tablets	50	00008-0607-01
Prepcort Cream 0.5%	15 gm	00573-2851-10
Prepcort Cream 0.5%	30 gm	00573-2851-20
Pro-Cort Cream	30 gm	00077-0787-21
Quinine Sulf. Pulvules 130mg	100	00002-0626-02
Quinine Sulf. Tablets 325mg	100	00002-0336-02
Recoup Tablets	30	00005-4591-13
Redisol Tablets 50mcg	100	00006-0915-68
Rhulicort Cream	20 gm	00005-9098-23
Rhulicort Lotion	60 cc	00005-9099-41
Riboflavin Tablets 5mg	100	00002-1047-02
Robalate Tablets	100	00031-7074-63
Roeribec Tablets	100	00995-5080-66
Senokap DSS Capsules	60	00034-1400-60

**HUMAN SERVICES**

**PROPOSALS**

Taka-Combex Kapseals	100	00071-0368-24
Tear-Efrin Oph. Solution	15 cc	00058-0703-15
Terpin Hyd. w/Cod. Elixir/P-D	120 cc	00071-2410-17
Terramycin Top. Oint.	15 gm	00995-0850-29
Thera-Combex Kapseals	100	00071-0374-24
Theragran-Z Tablets	60	00003-0341-40
Tri-Vi-Sol Tablets	100	00087-0413-02
Tronothane Jelly 1%	30 gm	00074-6650-01
Tussagesic Suspension	480 cc	00043-0505-16
Tusscapine Chewable Tablets	24	00585-0316-20
Tusscapine Suspension	120 cc	00585-0317-01
Two/G Liquid	120 cc	00068-1035-04
Two/G-DM Liquid	120 cc	00068-1036-04
Verdefam Cream	30 gm	00299-3990-01
Verdefam Solution	60 cc	00299-3991-02
Verequad Suspension	480 cc	00044-6980-01
Verequad Tablets	100	00044-6920-02
Vi-Aqua Forte Capsules	100	00053-4421-00
Vi-Aquammin Forte Capsules	100	00053-4521-00
Vigran Chewable Tablets	2x 60	00003-0407-61
Vit. B-1 Tabs 50mg/Squibb	100	00003-0915-50
Vit. C Tablets 100mg/Lilly	100	00002-2045-02
Vit. C Tablets 250mg/Lilly	100	00002-2060-02
Vit. C Tablets 250mg/Pfizer	100	00995-6210-66
Vit. C Tablets 250mg/Squibb	100	00003-0196-50
Vit. C Tablets 500mg/Pfizer	100	00995-6240-66
Vit. E Capsules 200iu/Squibb	100	00003-0353-50
Vit. E Capsules 400iu/Squibb	90	00003-0354-40
Viterra Hi-Pot. Tablets	100	00995-6290-66
Viterra Orig. Form. Tablets	100	00995-6230-66
Viterra E Caps 100mg	100	00995-6250-66
Viterra E Caps 200mg	100	00995-6270-66
Viterra E Caps 400mg	100	00995-6280-66
Viterra E Caps 600mg	100	00995-9910-07
Wellcortin Cream 0.5%	15 gm	00081-0172-88
Wellcortin Lotion 0.5%	30 cc	00081-0173-87
Wellcortin Ointment 0.5%	15 gm	00081-0171-88]

**SUMMARIZED LISTING OF CHANGES  
APPENDIX B**

General Non-Legend Drugs

<u>Product</u>	<u>Former NDC</u>	<u>Current NDC</u>
Alu-Cap Capsules	[0000089-0106-10	<b>0000089-0105-10</b>
Amosan Powder 20	0027816-0850-20	<b>0000041-0850-20</b>
Amosan Powder 40	0027816-0850-40	<b>0000041-0850-40</b>
Ascriptin Tablets	0000067-0135-68	<b>0000067-0145-68</b>
Ascription A/D Tablets	0000067-0137-68	<b>0000067-0147-68</b>
Bacid Capsules	0000585-0105-01	<b>0000235-0105-01</b>
Bonacal-Plus Tablets	0000482-0104-01	<b>0000482-0104-23</b>
Cal-Sup Tablets	0000089-0110-10	<b>0000890-0110-10</b>
Cerose-DM Liquid	0000008-4128-01	<b>0000008-4204-02</b>
Coricidin Nasal Mist Spray	0000085-0230-05	<b>0000085-0238-15</b>
Coryban-D Capsules	0000995-3690-75	<b>0074300-0044-50</b>
Dermoplast Lotion	0000046-1014-03	<b>0000573-0845-20</b>
Dermoplast Spray	0000046-1008-02	<b>0000573-0855-20</b>
Di-Gel Liquid	0000998-1000-02	<b>0041100-0713-80</b>
Di-Gel Tablets	0000998-1001-03	<b>0041100-0577-90</b>
Dia-Quel Liquid	0000088-2011-11	<b>0052836-0333-33</b>
Dilone Tablets	0000056-0024-70	<b>0025866-0052-40</b>
Dimacol Capsules	0000031-1652-63	<b>0000031-1653-63</b>
Dramimine Liquid	0000025-1736-80	<b>0000014-1736-80</b>
Duolube Ointment	0000451-2020-38	<b>0010119-9901-38</b>
Enzactin Cream	0000046-0201-01	<b>0000573-1436-10</b>
Festal II Tablets	0000039-0072-10	<b>0000039-0101-10</b>
Fiber Guard Tablets	0000046-0501-81	<b>0000573-1485-20</b>
Gemnisyn Tablets	0000067-0171-68	<b>0000091-0171-01</b>
Hytone Cream 0.05%	0000066-0082-01	<b>0000066-0182-01</b>
I.L.X. Tablets w/B-12	0000482-0109-01	<b>0000482-0110-23</b>
Ipsatol Syrup	0000085-0650-04	<b>0000482-0650-04</b>

**PROPOSALS**

Interested Persons see Inside Front Cover

**HUMAN SERVICES**

Ircon Tablets 200mg	0000085-0628-01	0000482-0628-01
Isoclor Liquid	0000585-2264-01	0000235-2264-01
Isoclor Tablets	0000585-2265-01	0000235-2265-01
Isoclor Timesules	0000585-2266-01	0000235-2266-01
Kaopectate Conc. 240cc	0000009-0333-03	0000009-3465-01
Konsyl Powder (10oz)	0000524-0203-31	0000224-1801-06
Konsyl Powder (15oz)	0000524-0203-45	0000224-1801-07
Kondremul Liquid 480cc	0000585-0121-00	0000235-0121-00
Lipoflavonoid Capsules	0000058-1501-17	0055499-0501-17
Lipotriad Capsules	0000058-1500-17	0055499-0500-17
Lipotriad Liquid 480cc	0000058-2505-30	0055499-0505-30
Lytren Nursette	0000087-0294-02	0000087-0294-03
Maalox Suspension 360cc	0000067-0330-73	0000067-0330-71
Maalox Therapeutic Conc. 360cc	0000067-0334-73	0000067-0334-71
Marezine Tablets	0000081-0652-16	0000081-0652-15
Metamucil Powder Any Flavor 198gm	0037000-7400-70	0037000-0010-02
Metamucil Powder Any Flavor 397gm	0037000-7400-80	0037000-0010-03
Metamucil Powder Any Flavor 595gm	0037000-7400-90	0037000-0010-04
Muro Tears Solution 15cc	0000451-3515-85	0010119-9904-15
Murocel Solution 15cc	0000451-3510-85	0000303-9902-15
Naldecon CX Adult Liquid 120cc	0000015-5660-40	0000015-5661-40
Naldecon DX Adult Liquid 120cc	0000015-5668-40	0000015-5669-40
Nico-400 Capsules	0000088-1575-47	0002604-1575-01
Nuprin Tablets 200mg	0000009-0311-09	0019810-0076-04
Orthoxicol Syrup 120cc	0000009-0222-03	0000009-3476-02
Parepectolin 120cc	0000067-0660-60	0000075-0660-60
Pedialyte R.T.U. Bottles 240cc	0000074-5769-24	0000074-6470-08
Perdiem Granules 100gm	0046213-0690-68	0000067-0690-68
Perdiem Granules 250gm	0046213-0690-70	0000067-0690-70
Peri-Wash Liquid 120cc	0011701-0014-01	0011701-0014-04
Peri-Wash II Liquid 120cc	0011701-0009-01	0011701-0009-04
Persistin Tablets	0000585-0122-00	0000235-0122-00
Posture Tablets 300mg	0000046-0274-81	0000573-2725-30
Posture Tablets 600mg	0000046-0275-60	0000573-2730-20
Posture-D Tablets 300mg	0000046-0276-81	0000573-2735-30
Posture-D Tablets 600mg	0000046-0277-60	0000573-2740-20
Pyrroxate Capsules	0000009-3212-02	0000009-3212-01
Riopan Plus 2 Suspension 360cc	0000573-3220-02	0000573-3220-20
Romilar Children's Cough Syrup 90cc	0010158-0019-02	0010158-0190-20
Romilar-CF Syrup 90cc	0010158-0018-04	0010158-0180-40
Serutan Granules 180gm	0022170-0135-31	0053100-1353-10
Serutan Granules 540gm	0022170-0135-51	0053100-1355-10
Serutan Powder 210gm	0022170-0136-31	0053100-1363-10
Serutan Powder 420gm	0022170-0136-51	0053100-1365-10
Serutan Powder 1.32lb	0022170-0136-71	0053100-1367-10
Sterile Sod. Chl. Sol. 0.45% 3cc	0049502-0020-03	0049502-0620-03
Sterile Sod. Chl. Sol. 0.45% 5cc	0049502-0020-05	0049502-0620-05
Terramycin Topical Oint. 30gm	0000995-0850-52	0074300-0043-30
Terramycin Topical Powder 30gm	0000069-0860-51	0074300-0043-40
Triaminicin Tablets	0000043-0064-51	0000043-0074-51
Tussar-2 Syrup 480cc	0000075-3636-01	0000075-3666-01
Tussar-SF Syrup 120cc	0000075-3635-05	0000075-3665-05
Ultra Tears Oph. Solution 15cc	0000065-0412-15	0000998-0412-15
Vaponefrin Solution 7.5cc	0000585-0201-03	0000235-1201-03
Vaponefrin Solution 15cc	0000585-0201-04	0000235-1201-04
Vaponefrin Solution 30cc	0000585-0201-05	0000235-1201-05
Visine Eye Drops 15cc	0000998-8025-01	0074300-0080-30
Visine Eye Drops 22.5cc	0000998-8025-02	0074300-0013-60
Visine Eye Drops 30cc	0000998-8025-03	0074300-0030-80
Vit. B Comp. Tabs/Squibb	0000003-0204-50	0000003-0204-61
Vitron-C Plus Tablets	0000585-1125-02	0000235-1125-02
Vitron-C Tablets	0000585-0123-00	0000235-0123-00
Zephiran Chl. Conc. Sol. 17% 120cc	0008024-2534-02]	0000024-2534-02

APPENDIX C

Hypodermic Syringes and/or Needles

(No change in introductory text.)

<u>Product Description</u>	<u>Reporting Unit</u>	<u>Assigned Product Code</u>
...		
Syringes and Needle Units, Disposable		
...		
Regular, 5cc, w/any size needle	Each	00293-5630-01
Regular, 10cc, w/any size needle	Each	00293-5641-01
...		

APPENDIX D

Legend Devices

(No change in introductory text.)

<u>Product Description</u>	<u>Reporting Unit</u>	<u>Assigned Product Code</u>
<b>Actiderm Dermatological Patch 5</b>	<b>Each</b>	<b>00003-0375-05</b>
[Pero Chamber] Aerochamber Device	Each	0000456-3154-67
<b>Aerochamber with Mask 1</b>	<b>Each</b>	<b>00456-8745-13</b>
...		
[Inhal-Aid Drug Delivery System	Each	0000085-4600-01]
...		
<b>Envisan Treatment Multipack 1</b>	<b>Each</b>	<b>00088-5000-02</b>
...		
<b>Inhal-Aid Drug Delivery System</b>	<b>Each</b>	<b>0000085-4600-01</b>
...		
<b>Inspirease Replacement Bags 12</b>	<b>Bag</b>	<b>00085-4602-12</b>
...		
<b>Novolin Pen Insulin Deliv. Syst. 1</b>	<b>Each</b>	<b>00003-1875-35</b>
[Novo Pen Insulin Delivery Device	Each	0000003-1852-30]
...		
<b>Respigard II Nebulizer 20</b>	<b>Neb.</b>	<b>00293-1240-30</b>
<b>Respigard II Nebulizer 50</b>	<b>Neb.</b>	<b>00293-1240-31</b>
<b>Swivel Nut and Tail Piece Connector 1</b> (For use with Respigard)	<b>Each</b>	<b>00293-1935-00</b>

APPENDIX E

Protein Replacements and Other Special Items

(No change in introductory text.)

<u>Product Description</u>	<u>Reporting Unit</u>	<u>NDC or Product Code</u>
<b>Alimentum Liquid 32 oz</b>	<b>Each</b>	<b>70074-0602-37</b>
...		
<b>Citrotein Powder 14 oz</b>	<b>Each</b>	<b>00212-1700-08</b>
...		
[Lactase] Lactrase Capsules 100	Cap	[0000093-3500-01] 0000091-3505-01
...		
<b>Resource Liquid (any flavor) 8 oz</b>	<b>Each</b>	<b>00212-3371-62</b>
<b>Resource Plus Liquid (any flavor) 8 oz</b>	<b>Each</b>	<b>00212-3381-62</b>
...		
<b>Sustacal Powder 1 lb</b>	<b>Each</b>	<b>00087-0353-44</b>
...		
<b>Sustacal Pudding (any flavor) 5 oz</b>	<b>Each</b>	<b>00087-0410-41</b>
...		
<b>Tolerex Packets 6x80 gm</b>	<b>Each</b>	<b>00149-0458-01</b>
...		
[Vivonex High Nitrogen 10x80 gm	Each	00149-0051-01]
...		
[Vivonex Standard Diet 6x80 gm	Each	00149-0052-01]
<b>Vivonex T.E.N. Packets 10x80 gm</b>	<b>Each</b>	<b>00149-0067-01</b>
...		

(a)

**DIVISION OF ECONOMIC ASSISTANCE****Public Assistance Manual  
Refugee Resettlement Program****Proposed Amendment: N.J.A.C. 10:81-10.7**

Authorized By: William Waldman, Acting Commissioner,  
Department of Human Services.  
Authority: N.J.S.A. 44:10-3; 45 CFR 400.200, 400.203, and  
400.204.

Proposal Number: PRN 1990-179.

Submit comments by May 16, 1990 to:

Marion E. Reitz, Director  
Division of Economic Assistance  
CN 716  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Federal funds authorized for the Refugee Resettlement Program (RRP) are not sufficient to enable the Federal Office of Refugee Resettlement to continue assistance to states for refugees during their first 24 months in the United States, or to cover cash and medical assistance costs during their first 12 months in the United States. Available Federal funds will suffice only for the remainder of Federal Fiscal Year 1990 (January 1 through September 30, 1990). The eligibility limitation provision of Refugee Cash Assistance and Refugee Medical Assistance as defined at 45 CFR 400.203 and 400.204 has been reduced from 24 months to 12 months from a refugee's date of entry into the United States for Aid to Families with Dependent Children N-segment (AFDC-N) and General Assistance (GA)-type RRP cases; and has been reduced from 24 months to four months from a refugee's date of entry into the United States for AFDC-C and AFDC-F RRP cases. The proposed amendment reflects reduction in the time limitation as mandated and authorized under the Immigration and Nationality Act and 45 CFR 400.200.

**Social Impact**

Refugee assistance will continue through existing AFDC and/or GA programs as the new eligibility time limitations are applied in the Federal RRP. No decrease in public assistance to clients is anticipated as a result of the proposed amendment.

**Economic Impact**

As a result of the Federally mandated change, refugees receiving assistance under the AFDC-C and AFDC-F segment program who had been in the United States for five months or more as of January 1, 1990, are subject to transfer to the regular AFDC program without interruption in the receipt of assistance or level of benefit.

Those AFDC-N type cases which have been in the United States more than 12 months as of January 1, 1990, are subject to transfer to the regular AFDC-N segment program. Such transfers will be accomplished without loss of benefits since these cases were previously transferred to the regular AFDC-N standard at the thirteenth month under the terms of the current RRP rules.

It is estimated that a Statewide total of 160 cases are affected by the proposed amendment.

**Regulatory Flexibility Statement**

This amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment imposes no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for Refugee Resettlement to a low-income population by a governmental agency rather than a private business establishment.

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

**10:81-10.7 Eligibility**

(a) No U.S. citizen is eligible for RRP (exception: see (a)2 and 3 below) and a refugee may be eligible only if he or she meets the appropriate definition and INS status in N.J.A.C. 10:81-10.2 through 10.3. In addition, all refugees [who have either been in the U.S. for

two years or were released into the community and received parole status two years prior] **whose time limitations have expired** will cease to be eligible for cash and medical assistance under RRP (see (b) below). Such ineligible refugees who are still in need shall, as appropriate, be assisted under AFDC-N or referred to the municipal welfare department via Form PA-14, "Referral for Services", giving the reason for referral.

1.-3. (No change.)

(b) Eligibility limitations: Eligibility for assistance under RRP is limited to a total of [24] **12 months for AFDC-N and General Assistance type cases, and four months for AFDC-C and -F type cases.**

1. (No change.)

2. Rules concerning GA (AFDC-N or GA) type cases are as follows:

i. [First 12 month period:] For all GA and AFDC-N type applicants/recipients residing in the U.S. for 12 months or less from their initial entry date or when parole status was first granted as identified on INS Form I-94, income and resources shall be treated in accordance with the standards and criteria applicable to AFDC-C or -F, except, that CWAs shall not apply the \$30.00 and one-third earned income disregard. The assistance standard for applicants/recipients shall be the appropriate amount for eligible family size using Schedule I found in N.J.A.C. 10:82-1.2.

ii. Second 12 month period: During the second 12 month period, GA and AFDC-N type cases shall have eligibility/assistance payment entitlement determined in accordance with AFDC-N or GA criteria, as applicable.

(1) AFDC-N type RRP applicants/recipients (intact families not meeting employment criteria for AFDC-F segment) shall have eligibility and assistance payment entitlement determined by using Schedule II found in N.J.A.C. 10:82-1.2 and N.J.A.C. 10:82-2.11 and 12. CWAs shall apply the same standards and criteria relevant to income and resources as for any other AFDC-N applicant/recipient including applicable disregards.

(2) All other GA type cases (single adults and childless couples) shall have need determined using the same standards and criteria as other GA applicants/recipients, including applicable disregards, in accordance with N.J.A.C. 10:85. In determining eligibility and assistance payment entitlement, CWAs shall use the appropriate standard for the eligible family size, using Schedule I or II in N.J.A.C. 10:85, as appropriate.]

[iii.]iii. During [both] the 12 month period[s], all eligible GA type cases will retain Medicaid eligibility.

(c)-(j) (No change.)

**INSURANCE**

(b)

**DIVISION OF PROPERTY AND LIABILITY****Cancellation and Nonrenewal of Commercial****Insurance Policies****Prohibition of Certain Cancellation and Nonrenewal****Activity****Duration****Proposed Repeals: N.J.A.C. 11:1-20.12 and 22.4**

Authorized By: Jasper J. Jackson, Acting Commissioner,  
Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:22-6.14(a)1, 2 and 3,  
17:29A-1 et seq., 17:29AA-1 et seq., 17:29B-4 and 17:29C-1 et  
seq.

Proposal Number: PRN 1990-197.

Submit written comments by May 16, 1990 to:

Verice M. Mason  
Assistant Commissioner  
Legislative and Regulatory Affairs  
Department of Insurance  
CN 325  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

This proposal would repeal those sections of the rules concerning cancellation and nonrenewal of commercial insurance policies which would require the expiration of these rules on June 24, 1990 (two years from the date of their readoption). These rules have been in effect on a continuous basis since September 16, 1985.

This proposal is essentially technical in nature and will have the effect of making the expiration date of these rules coincident with that for the chapter in which they are codified (N.J.A.C. 11:1 will expire on February 3, 1991 unless earlier readopted).

Although originally adopted on an emergency basis, the Department believes that the matters which the rules address continue to require regulatory control.

#### Social Impact

The instant proposed repeals will have no social impact in and of themselves since they will merely end the current rules (and current social impact) to continue beyond their previously determined expiration date. The social impact of the current rules is essentially the creation and maintenance of an appropriate framework for governing commercial insurance policy termination and ensuring compliance with statutory standards prohibiting terminations that are arbitrary or unfairly discriminatory.

#### Economic Impact

The instant proposed repeals do not in and of themselves impose an economic impact since they merely provide the mechanism for continuing the viability of the current rules (and current economic impact) concerning commercial insurance policy termination.

The repeals will not have an economic impact on the public or commercial insureds because no specific costs are imposed on either group in order to provide the essential protections now afforded under N.J.A.C. 11:1-20 and 22, which protections are maintained by the proposal.

The economic impact of the current rules is not significant. Any administrative costs to commercial lines insurers in order to comply with the cancellation and nonrenewal notice, documentation or other requirements in the current rules are relatively minor in relation to the benefits of protecting commercial insureds from unfair termination of their insurance policies which may threaten their ability to continue business operations.

The current rules do not adversely affect the loss experience of commercial lines insurers because such insurers may continue to cancel or nonrenew insureds in circumstances where proper notice, documentation or other requirements of the proposed adoptions are satisfied.

The Department has experienced little, if any, economic impact as a result of the current rules. Any costs of continued implementation of the current rules will be absorbed by the current Department budget and staff.

The present economic impact on the regulated parties will be continued by the proposal.

#### Regulatory Flexibility Statement

The current rules will affect only commercial lines insurers. If there are small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., in the commercial lines insurance industry, the same policy cancellation or nonrenewal standards must apply to all commercial insurers in order to protect all insurance purchasers.

All commercial lines insurers must comply with the current rules to the same extent because proper treatment of commercial lines insurance purchasers upon cancellation or nonrenewal of their insurance policies in New Jersey is a requirement placed upon all commercial lines insurers. Both the large and small firms falling within the purview of these rules have the same responsibility in protecting their respective insurance purchasers.

The instant proposed repeals will not impose new obligations or requirements on commercial carriers of any size since they merely end the current rules (and obligations and requirements) to continue in effect.

The instant repeals will not require commercial carriers to hire professional services or to incur additional (initial or annual) costs.

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

[11:1-20.12 Duration

Unless earlier repromulgated by the Commissioner, this subchapter shall expire two years after it becomes effective.]

[11:1-22.4 Duration

Unless earlier repromulgated by the Commissioner, this subchapter shall expire two years after its effective date.]

(a)

### DIVISION OF ACTUARIAL SERVICES

#### Annual Medicare Supplement Coverage Survey

#### Proposed New Rules: N.J.A.C. 11:4-35

Authorized By: Jasper J. Jackson, Acting Commissioner,  
Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:35C-7 and  
17B:26A-7.

Proposal Number: PRN-196.

Submit comments by May 16, 1990 to:

Verice M. Mason  
Assistant Commissioner  
Legislative and Regulatory Affairs  
New Jersey Department of Insurance  
20 West State Street  
CN 325  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

In 1987, Section 4081 of the Federal Omnibus Budget Reconciliation Act added reporting requirements to Title XVIII of the Social Security Act. These reporting requirements, set out under provision 1882(b)(1)(E) of Title XVIII, mandate that each state annually submit information to the Secretary of Health and Human Services concerning Medicare supplement policies in force or approved for issue and delivery in that state.

Specific aspects of the required information is best provided to the states by the insurer, since each insurer will always have the most up-to-date information on any one of its policies or contracts. Therefore, the Department of Insurance ("DOI") is proposing these new rules to require insurers to supply DOI with specific information annually about Medicare supplement coverage provided by insurers to residents of this State. A proposed standard survey form is included in the subchapter Appendix as Exhibit A, although DOI will accept any similar survey form, so long as all of the appropriate information is provided as requested.

Additionally, DOI is requesting information regarding the benefits provided by or offered as options to the various policies available in New Jersey. Although policies and contracts cannot duplicate coverage provided by Medicare and must meet certain minimum benefit standards in order to be called a Medicare supplement policy, there still remains additional benefit areas in which the various policies may distinguish themselves.

As a service to consumers, DOI has maintained charts for several years that outline the major possible benefit areas. These charts have indicated which policies or contracts provide which benefits, and whether the benefit is available as a standard benefit of that Medicare supplement policy, or is optional for an additional premium.

Because policy forms may change yearly, DOI recognizes that the most up-to-date information on benefits and premiums must be obtained from insurers directly. Therefore, DOI is proposing that insurers who have policy forms approved for issue in the current and/or commencing calendar year provide DOI with the requested benefit information on those policy forms. Insurers need not report information on forms which they intend to cease issuing in the commencing calendar year, since that information will not be responsive to the purchasing public's needs. A standard form for this survey has been proposed in the subchapter Appendix as Exhibit B, and the Department strongly urges the use of this survey form to simplify reporting and analysis.

#### Social Impact

The Federal reporting requirement is intended primarily as a means of verifying a state's regulatory program by the Secretary of Health and Human Services. No direct cognizable social impact is anticipated by compliance with the portion of the proposed rules designed to meet the Federal standards for verification.

The charts supply valuable information to consumers directly and through the Senior Health Insurance Program (SHIP), a Statewide con-

sumer education program. Naturally, the more up-to-date and accurate the information, the more valuable it is in helping individuals understand the products available in the market, and in choosing which product provides those benefits best suited to their needs.

Previously, these charts had contained information for individual policies only, but the charts will now incorporate information on group policies. This will help answer the myriad questions which SHIP receives each year concerning group policies not appearing on the charts.

#### Economic Impact

No substantial economic impact is anticipated beyond the annual administrative cost of preparing and submitting the reports. Insurers have supplied DOI with all of the requested information from time to time previously. The proposed new rules will simply make the reporting procedures and requested information more uniform.

#### Regulatory Flexibility Statement

The Department is aware of no affected insurer which would qualify as a small business as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, the proposed new rules do not require a small business regulatory flexibility analysis.

Full text of the proposed new rules follows:

### SUBCHAPTER 35. ANNUAL MEDICARE SUPPLEMENT POLICY SURVEY

#### 11:4-35.1 Purpose

The purpose of this subchapter is to obtain from insurers the most current and accurate information available with respect to Medicare supplement policies, contracts and certificates delivered in this State, which information is required to be submitted by the Commissioner of Insurance to the United States Secretary of Health and Human Services in accordance with reporting requirements in Section 1882(b)(1)(E) of Title XVIII of the Social Security Act, 42 U.S.C. §§1395 et seq. The information will be used also to update charts concerning Medicare supplement coverage available in this State, which charts are maintained by the Department of Insurance and distributed upon request.

#### 11:4-35.2 Scope

(a) All insurers providing Medicare supplement coverage in this State shall file with the Commissioner all the information requested by N.J.A.C. 11:4-35.4(a) for each policy or contract form for which policies, contracts, certificates or evidences of coverage have been or will be delivered or issued for delivery in this State and which are in force as of the date of filing.

(b) All insurers providing Medicare supplement coverage in this State shall file with the Commissioner all the information requested by N.J.A.C. 11:4-35.4(c) for each policy or contract form for which policies, contracts, certificates or evidences of coverage will be or will continue to be delivered or issued for delivery in this State on or after September 1 of the year in which the filing is submitted, except that insurers do not need to file the information for any policy, contract, certificate or evidence of coverage which the insurer will cease to deliver or issue for delivery in this State after December 31 of the year in which the filing is submitted.

#### 11:4-35.3 Definitions

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

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

"Department" means the New Jersey Department of Insurance.

"Insurer" means any person, as that term is defined at N.J.S.A. 17B:17-6, engaged in the business of insurance providing health benefits or services, or a combination thereof, to a resident of this State.

"Medicare supplement policy" means a group or individual policy which is advertised, marketed, or designed primarily as, or is otherwise held out to be, a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare by reason of age. The term does not include:

1. A policy of one or more employee or labor organizations, or of the trustees of a fund established by one or more employee or labor organizations, or a combination thereof, or for employees or

former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

2. Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such policies or contracts are not marketed or held out to be Medicare supplement policies or benefit plans.

"Policy" means any policy, subscriber contract, enrollment contract, certificate or evidence of coverage issued to an individual or group by any health insurer.

#### 11:4-35.4 Filing

(a) Insurers shall file annually with the Department, no later than August 1 of each year, as prescribed by N.J.A.C. 11:4-35.2(a), on a copy of Exhibit A, which appears as in the Appendix to this subchapter, incorporated herein by reference, or in a substantially similar format, the following information, current as of the date of filing:

1. The insurer's name, address and telephone number;
2. The name, title and telephone number of the officer of the insurer responding to the survey;
3. The name and telephone number of the individual designated as the contact person for Medicare carriers;
4. An address where the Medicare carriers should send claims notices; and
5. A list of the policy forms for which there are policies in force in this State, with the following relevant information:
  - i. Policy form number(s);
  - ii. The policy form name or a descriptive designation of the policy, if any;
  - iii. The date the policy form was approved;
  - iv. An indication of whether the policy form is currently being sold or is a closed block of business; and
  - v. If closed, the date the policy form was withdrawn from sale in the market.

(b) Filings made pursuant to (a) above should be submitted to:

Assistant Commissioner  
Legislative and Regulatory Affairs  
New Jersey Department of Insurance  
20 West State Street  
CN 325  
Trenton, New Jersey 08625

(c) Insurers shall file annually with the Department, no later than August 1 of each year, as prescribed by N.J.A.C. 11:4-35.2(b), on a separate copy of Exhibit B for each policy form, which exhibit appears as in the Appendix to this subchapter, the following information, current as of the date of filing:

1. The insurer name and address;
2. The name, title and telephone number of respondent;
3. The Medicare supplement policy form number;
4. The number of policyholders of that policy form in this State;
5. Current premiums for a male and female at issue age of 65 provided on a monthly basis for that form;
6. A description of the basic policy provisions and/or benefits which shall include an indication of whether coverage is provided for the following:
  - i. Medicare's Part A deductible amount;
  - ii. Medicare's co-payment for skilled nursing facility care;
  - iii. Benefits for skilled nursing facility care beyond that provided by Medicare, and number of additional days of coverage;
  - iv. Medicare's Part B deductible;
  - v. Benefits for Part B expenses in excess of Medicare's allowed amounts;
  - vi. Benefit(s) for a private room in a hospital;
  - vii. Benefits for care received outside the United States, not otherwise eligible for Medicare reimbursement;
  - viii. Benefits for private duty nursing;
  - ix. Benefits for prescription drugs;
  - x. Medicare's blood deductible; and
  - xi. Benefits for home health care.
7. An indication of the policy deductible for Medicare Part B expenses;

- 8. An indication of whether any of the described benefits are optional, and if so, an inclusion of the current additional monthly premium payable to obtain that optional benefit;
  - 9. A statement of whether the insurer offers a policy to people under age 65 who are eligible for Medicare due to a disability, and the form number of such a policy;
  - 10. The telephone number which interested New Jersey consumers may call to obtain additional information or an outline of coverage for that policy form; and
  - 11. The Outline of Coverage made available to current applicants as an attachment to or enclosure with Exhibit B.
- (d) Filings made pursuant to (c) above should be submitted to:

SHIP Coordinator  
 Division of Public Affairs  
 New Jersey Department of Insurance  
 20 West State Street  
 CN 325  
 Trenton, New Jersey 08625

11:4-35.5 Severability  
 If any provision of this subchapter or the application thereof to any person or circumstance is held to be invalid for any reason, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

APPENDIX

EXHIBIT A  
MEDICARE SUPPLEMENT POLICY SURVEY—PART A

(To be completed and submitted no later than August 1 to the Assistant Commissioner, Legislative and Regulatory Affairs, New Jersey Department of Insurance, 20 West State Street, CN 325, Trenton, New Jersey 08625)

- (a) Insurer Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 Telephone Number: \_\_\_\_\_
- (b) Respondent's Name and Title: \_\_\_\_\_  
 Telephone Number: \_\_\_\_\_
- (c) Name of Contact Person for Medicare Carrier: \_\_\_\_\_  
 Telephone Number: \_\_\_\_\_
- (d) Address where Medicare Carrier(s) should send claims notices: \_\_\_\_\_  
 \_\_\_\_\_
- (e) Policy information (please attach additional pages, if necessary):

Policy Form Number	Name or Designation	Date Approved	Check One		Date of Withdrawal
			Currently Sold	Closed Block	

EXHIBIT B  
MEDICARE SUPPLEMENT POLICY SURVEY—PART B

(Submit completed forms no later than August 1 to: SHIP Coordinator, Division of Public Affairs, New Jersey Department of Insurance, 20 West State Street, CN 325, Trenton, New Jersey 08625)

- (a) Insurer Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_
- (b) Respondent's Name and Title: \_\_\_\_\_  
 Telephone Number: \_\_\_\_\_
- (c) Policy Form Number: \_\_\_\_\_  
 Number of New Jersey Policyholders: \_\_\_\_\_  
 Current Monthly Premiums: Male/Issue Age 65 \$ \_\_\_\_\_  
 Female/Issue Age 65 \$ \_\_\_\_\_

Policy Provisions/Benefits		If optional, please show add'l monthly premium
1. Does policy cover Medicare's Part A deductible?	Y___ N___	\$
2. Does policy cover Medicare's co-payment for skilled nursing facility care?	Y___ N___	\$
3. Does policy provide a benefit for care in a skilled nursing facility not certified by Medicare?	Y___ N___	\$
4. Does policy provide a benefit for care in a skilled nursing facility beyond Medicare's coverage? If so, for how many additional days? _____	Y___ N___	\$
5. Policy deductible for Part B expenses: _____\$0 _____\$75		
6. Does policy reimburse Medicare's Part B deductible?	Y___ N___	\$
7. Does policy provide a benefit for Part B expenses in excess of Medicare's allowed amounts?	Y___ N___	\$
8. Does policy provide a benefit for a private room in a hospital?	Y___ N___	\$
9. Does policy provide a benefit for care received outside the U.S. that is not eligible for Medicare reimbursement?	Y___ N___	\$
10. Does policy provide a benefit for private duty nursing?	Y___ N___	\$
11. Does policy provide a benefit for prescription drugs?	Y___ N___	\$
12. Does policy cover Medicare's blood deductible?	Y___ N___	\$
13. Does policy provide benefits for home health care?	Y___ N___	\$
14. Other benefits (attach additional pages if needed):		\$
_____		\$
_____		\$
_____		\$
_____		\$
_____		\$

- (d) Does your company offer a policy to people under the age of 65 who are Medicare eligible due to disability?  
If so, please indicate policy form number: \_\_\_\_\_
- (e) Telephone number for your company where interested New Jersey consumers can call to obtain additional information or an Outline of Coverage:  
\_\_\_\_\_

MEDICAR/LRWPC

**LABOR**  
**(a)**

**DIVISION OF INCOME SECURITY**  
**Temporary Disability Benefits**  
**Security Exemption**  
**Proposed Repeal and New Rule: N.J.A.C.**  
**12:18-2.25**

Authorized By: Raymond L. Bramucci, Commissioner,  
Department of Labor.  
Authority: N.J.S.A. 34:1-20, 34:1A-3(e), N.J.S.A. 43:21-15 et  
seq.  
Proposal Number: PRN 1990-201.  
Submit comments by May 16, 1990 to:  
Alfred B. Vuocolo, Jr.  
Chief Legal Officer  
Office of the Commissioner  
Department of Labor  
CN 110  
Trenton, New Jersey 08625-0110

The agency proposal follows:

**Summary**

The Department has decided to repeal existing rule, N.J.A.C. 12:18-2.25, concerning security exemptions under N.J.A.C. 12:18, Temporary Disability Benefits, and to propose a new rule which more specifically defines the instances in which an exemption from the security requirement will be permitted.

Employers who have a private plan which does not provide for the assumption of disability insurance benefits are required to post some type of security with the Division of Employment Security which guarantees the payment of obligations under the private plan. The amount of security is not to be less than one-half of the contributions paid by the employees under the private plan or one-half of the estimated contributions, whichever is greater.

Pursuant to the current rule, security exemptions can be granted to certain employers; specifically, those employers who are exempted from providing security for workers' compensation liability and those employers who prove to the satisfaction of the Division of Unemployment and Disability Insurance that they are financially able to provide the benefits promised pursuant to the private plan.

The proposed new rule will specifically outline the procedure which must be followed in order to be granted a security exemption by the Division. Employers who do not have to provide security for their workers' compensation coverage may be granted an exemption without providing any additional proof of financial responsibility. Other employers who want a security exemption shall show the Division an audited financial statement with an unqualified audit report from a certified public accountant, proof that the employer has not sustained a net operating loss for the fiscal year closest to the date of application and evidence that the employer's current ratio of assets to liabilities is not less than 1.5 to one for the most recent fiscal year.

The proposed new rule also provides that a security exemption shall remain in effect from year to year, provided that the employer submits an audited annual financial statement accompanied by an unqualified audit report from a certified public accountant and demonstrates either that its current ratio of assets to liabilities has not decreased from the previous year or that it has not sustained a net operating loss in the preceding fiscal year which would affect its ability to pay benefits.

**Social Impact**

The proposed new rule will positively affect employees who work for entities who have a private plan for benefits, as it will ensure that such entities are granted an exemption from a security requirement only when they are determined to be financially solvent and able to provide benefits. This means that employees will be able to collect benefits which they are due pursuant to a private plan without fear that the employer will not be able to pay.

Employees will enjoy an increased sense of security as a result of the proposed new rule, as they will be confident that their private plans are solvent.

The Department expects that the proposed new rule will alleviate the problems attributable to private plan employers who have in the past been granted security exemptions when their financial status did not warrant such exception.

**Economic Impact**

The proposed new rule will have a positive economic effect on employees, as they will be confident that their benefits from a private plan will be paid to them when needed.

Employers may experience an increase in costs associated with accounting and bookkeeping fees and having to prepare financial statements concerning assets, liabilities and net loss. However, this cost will affect only those employers who apply for a security requirement exemption. Conversely, employers who apply for exemptions will be relieved of the expense of posting a security. If an employer does not wish to apply for an exemption from the security requirements, no costs will be imposed on the employer.

The Department does not expect to experience any economic impact as a result of the proposed new rule.

**Regulatory Flexibility Statement**

The proposed new rule may impose reporting, recordkeeping and compliance requirements upon businesses, some of which may be small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, these requirements, as described in the Economic Impact statement, will affect only those business entities who have a private plan and who are applying for an exemption from the security requirements. Therefore, the proposed new rules are expected to impact only a small number of employers.

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

**12:18-2.25 Security exemption**

(a) Exemption from the requirement of Section 2.24 (Security required) of this Chapter shall be granted to any employer who:

1. Is exempt from insuring his workmen's compensation liability, as provided by law; or
2. Satisfies the Division as to his financial responsibility to pay the benefits provided by his private plan by furnishing a complete, current financial statement and such other proof as may be acceptable to the Division. An annual review of the financial responsibility will be made.]

**12:18-2.25 Security exemption**

(a) Upon written application, exemption from the security requirement pursuant to N.J.A.C. 12:18-2.24 shall be granted to any employer who:

1. Is exempted from posting security for its workers' compensation liability; or
2. Demonstrates to the satisfaction of the Division that it is fiscally able to provide benefits by:
  - i. Submitting an audited financial statement accompanied by an unqualified audit report from a Certified Public Accountant;
  - ii. Proving that it has not sustained a net operating loss for the fiscal year whose ending date is closest to the date of application; and
  - iii. Showing that its current ratio of assets to liabilities is not less than 1.5 to one for the most recent fiscal year.

(b) An exemption granted pursuant to (a)1 above shall remain in effect as long as the workers' compensation exemption remains in effect.

(c) An exemption granted pursuant to (a)2 above shall remain in effect from year to year provided that the employer:

1. Submits an accredited annual financial statement accompanied by an unqualified audit report from a Certified Public Accountant; and

**2. Demonstrates that:**

- i. Its current ratio of assets to liabilities has not decreased from the previous fiscal year; or
- ii. It has not sustained a net operating loss in the preceding fiscal year which would adversely affect its ability to pay claims.

(a)

**DIVISION OF VOCATIONAL REHABILITATION SERVICES****Notice of Correction  
Vehicle Modification Requirements  
N.J.A.C. 12:45-3**

Take notice that the Department of Labor erroneously proposed for repeal N.J.A.C. 12:45-3, Vehicle Modification Requirements, published in the April 2, 1990 New Jersey Register at 22 N.J.R. 1045(c). The Department does not intend to repeal N.J.A.C. 12:45-3 and is retaining Subchapter 3 without change. Also, take notice, that in the Summary of the proposal N.J.A.C. 12:45-3 was erroneously addressed. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

**LAW AND PUBLIC SAFETY  
(b)****DIVISION OF MOTOR VEHICLES  
Reflectorized Registration Plates****Proposed New Rule: N.J.A.C. 13:20-40.1**

Authorized By: Col. Clinton L. Pagano, Director, Division of Motor Vehicles.

Authority: P.L. 1989, c.202, §2 (N.J.S.A. 39:3-33.9).

Proposal Number: PRN 1990-203.

Submit written comments by May 16, 1990 to:

Col. Clinton L. Pagano, Director  
Division of Motor Vehicles  
25 South Montgomery Street, 7th Floor  
Trenton, New Jersey 08666

The agency proposal follows:

**Summary**

The proposed new rule establishes that for purposes of P.L. 1989, c.202, §2, in addition to an annual motor vehicle registration fee, the Division of Motor Vehicles shall charge an additional annual fee of \$0.40. P.L. 1989, c.202, §2 mandates that the Division of Motor Vehicles undertake a phase-in program for the issuance of reflectorized motor vehicle registration plates in New Jersey. That statutory provision also provides that the Division may charge in addition to an annual motor vehicle registration fee, an additional annual fee not to exceed \$0.40 for the costs of the issuance of reflectorized motor vehicle registration plates in this State. The proposed new rule specifies \$0.40 as the additional annual fee to be charged by the Division.

**Social Impact**

The proposed new rule will have a beneficial social impact. The use of reflectorized license plates will assist law enforcement by facilitating the nighttime identification of vehicles from greater distances, thus contributing to the safety of law enforcement officers. The use of reflectorized license plates will also foster highway safety to the benefit of the general public by enabling motorists to more readily identify other vehicles on this State's roadways at night, thus decreasing the likelihood of nighttime rear-end collisions. The Division perceives no social impact upon itself.

**Economic Impact**

The proposed new rule will have an economic impact upon the public. Motor vehicle registrants, in addition to the payment of an annual motor vehicle registration fee, will also be required to pay the Division of Motor Vehicles an additional annual fee of \$0.40 for the costs of the issuance of reflectorized motor vehicle registration plates. The Division will incur costs in connection with the production and issuance of reflectorized motor vehicle registration plates, but it is anticipated that those costs will be offset by the collection of the additional annual \$0.40 fee to be charged by the Division as specified by the proposed new rule.

**Regulatory Flexibility Analysis**

Small businesses, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., will be impacted economically by the proposed new rule. Motor vehicle registrants (including small businesses registering their motor vehicles), in addition to the payment of an annual motor vehicle registration fee, will also be required to pay the Division of Motor Vehicles an additional annual fee of \$0.40 for the costs of the issuance of reflectorized motor vehicle registration plates. Other than the additional annual \$0.40 fee to be charged by the Division as specified by the proposed new rule, the rule imposes no other requirements upon small businesses. The proposed new rule imposes no additional small business reporting requirements, and should not require small businesses to engage additional professional services.

Full text of the proposed new rule follows:

**SUBCHAPTER 40. REFLECTORIZED REGISTRATION PLATES**

13:20-40.1 Additional annual fee

For purposes of P.L. 1989, c.202, §2, in addition to an annual motor vehicle registration fee, the Division of Motor Vehicles shall charge an additional annual fee of \$0.40.

**(a)**

**OFFICE OF THE STATE ATHLETIC CONTROL BOARD**

**Rules Governing Boxing, Wrestling and Sparring Exhibitions and Performances**

**Proposed Readoption: N.J.A.C. 13:46**

Authorized By: State Athletic Control Board, Larry Hazzard, Sr., Commissioner.

Authority: N.J.S.A. 5:2A-4.

Proposal Number: PRN 1990-195.

Submit comments by May 16, 1990 to:  
 Larry Hazzard, Sr., Commissioner  
 State Athletic Control Board  
 Station Plaza No. 4  
 CN 180  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66 (1978), the State Athletic Control Board's "Rules Governing Boxing, Wrestling and Sparring Exhibitions and Performances" (N.J.A.C. 13:46) expire on June 3, 1990. The State Athletic Control Board has reviewed these rules and determined them to be necessary, reasonable, adequate, efficient, understandable and responsive to the purpose for which they were originally promulgated. However, the Board has made this determination with the provision that a more extensive review of the rules be conducted in the near future.

The readoption of the subchapters is necessary because they protect the safety and well-being of participants in boxing, wrestling, kick boxing and combative sports exhibitions, events, performances and contests. In addition, readoption of the rules is necessary to promote the public confidence in the regulatory process and conduct of boxing, wrestling, kick boxing and combative sports exhibitions, events, performances and contests.

The rules were originally adopted in 1969. The State Athletic Control Board was created in 1985. At the time the Board was established, the rules governing boxing, wrestling and sparring exhibitions and performances were substantially amended. The rules have helped facilitate the Board's goals of regulation and safety in boxing, wrestling, kick boxing and combative sports. Rules which require medical testing and on-site inspectors have helped the State Athletic Control Board to realize comprehensive safety programs in the sports it regulates.

Subchapter 1 contains definitions of words and terms used in the chapter. Subchapter 1A contains class and weight provisions for boxers. Subchapters 2 and 3 prescribe ring equipment and boxing equipment standards. In addition, safety requirements are set forth.

Subchapter 4 provides licensing and permit procedures.

Subchapter 5 regulates boxers, including contract provisions, payment, fouls and various sanctions.

Subchapters 6 and 7 set forth qualifications and guidelines for managers and seconds.

Subchapter 8 addresses the responsibilities of boxing referees and judges. The subchapter provides round system scoring, a three knock-down rule and various fouls.

Subchapter 9 includes the requirement that inspectors shall assure enforcement of the Board's rules.

Subchapters 10 and 11 prescribe the duties of announcers and time-keepers.

Subchapter 12 provides rules to safeguard the health of athletes.

Subchapter 13 requires a television tax be paid to the State. Proper forms and procedures are prescribed within.

Subchapter 14 provides that promoters must carry medical insurance for boxers.

Subchapters 15 and 16 contain the specifications for tickets, including ticket form, inventory and complimentary tickets and provisions regulating doormen and box office employees.

Subchapter 17 contains the conduct and approval requirements for amateur boxing.

Subchapters 18 and 19 set forth the responsibilities of promoters and matchmakers.

Subchapters 20 and 21 prescribe the criteria which must be adhered to for wrestling events and the appointment, assignment and responsibilities of wrestling referees.

Subchapter 22 sets forth hearing and subpoena procedures.

Subchapter 23 provides standards of conduct.

This chapter is not being amended on readoption. However, the Board is in the process of reviewing and amending the chapter. Pursuant to Executive Order No. 66 (1978), the board must readopt the chapter at this time without amendments. The Board believes the current text of the chapter is sufficient to regulate boxing, wrestling and sparring exhibitions and performances until time allows for amendment.

**Social Impact**

The chapter has enabled the State Athletic Control Board to protect the health and safety of the athletes it regulates. Further, the chapter facilitates in maintaining the high standards of integrity and credibility in the sporting industries regulated by the Board. Since the same social conditions exist, the Board believes the rules should be continued for reasons which include safeguarding health and providing medical insurance for participants.

The chapter impacts on all persons who participate in the sporting industries regulated by the Board. Regulation is not limited to competitors in sporting events. Rather, the chapter's regulation is pervasive and encompasses all persons, practices and associations related to the operation of any boxing, wrestling, kick boxing or combative sports exhibition, event, performance or contest held in the State.

**Economic Impact**

The State Athletic Control Board spent approximately \$1,028,000 in State Fiscal Year 1989 for regulation of sports industries. During the same Fiscal Year, the Board collected approximately \$676,000 in revenues. The source of the revenues collected includes gate taxes, television taxes and license and permit fees.

All persons involved in the operation of any boxing, wrestling, kick boxing or combative sports exhibition, event, performance or contest held in the State must be licensed by the Board. Licensing fees are set by the Board and are promulgated in N.J.A.C. 13:46-4.6. There is also an economic impact to such persons by way of the costs involved in compliance with the rules on equipment and safety, health, insurance, employees, and standards of conduct. As no changes are proposed as part of this readoption, these costs should not increase as a result of this readoption.

**Regulatory Flexibility Statement**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Board has determined that these rules do not impose reporting, record keeping or other compliance procedures on small businesses. Although the rules require compliance from promoters and boxing managers, the Board does not find them to be encompassed within the Act's definition of a small business.

However, if promoters and boxing managers are within the purview of the Regulatory Flexibility Act's definition of small business, the Board believes that compliance with the rules is not unduly burdensome for

persons who chose to conduct business in such a highly regulated industry. Those areas in which compliance costs will be incurred are set forth in the Economic Impact statement above. Persons who operate small businesses should not be held to lower compliance standards than others who participate in the industry. Such an interpretation would run counter to the Board's goal of regulatory integrity and violate the Boxing, Wrestling and Combative Sports Act, N.J.S.A. 5:2A-19. These rules are necessary for compliance with the Act.

Full text of the proposed re-adoption appears in the New Jersey Administrative Code at N.J.A.C. 13:46.

## (a)

**NEW JERSEY RACING COMMISSION****Thoroughbred Rules  
Horsemen Associations****Proposed Amendment: N.J.A.C. 13:70-1.30**

Authorized By: New Jersey Racing Commission,

Bruce H. Garland, Executive Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1990-189.

Submit written comments by May 16, 1990 to:

Bruce H. Garland, Executive Director  
New Jersey Racing Commission  
200 Woolverton Street  
CN 088  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendment would provide that the thoroughbred racetracks will directly fund the thoroughbred horsemen's contribution to the pension program. At present, money derived from the statute is distributed to an authorized horsemen's association and they in turn forward the annual contribution to the pension program. This amendment will ensure the continued funding of the program by making the track associations forward their proportionate share directly to the pension program.

**Social Impact**

The proposed amendment would not have any effect on the general public or the racetracks. This amendment would ensure that annual contributions to the pension program are made on behalf of the thoroughbred horsemen.

**Economic Impact**

The proposed amendment would not have any economic impact on the public, State, racetracks, or horsemen's organizations. At present, the horsemen's association is funding the pension program directly from their revenue. This amendment would eliminate some revenue from the horsemen's association; however, it will also eliminate a corresponding amount of pension expense.

**Regulatory Flexibility Analysis**

The proposed amendment imposes no additional reporting, record keeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment reduces the administrative burden on horsemen's associations by providing for direct funding of the pension plan from the racetracks to the plan, eliminating the association's intermediary responsibilities.

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

13:70-1.30 Horsemen associations

(a)-(f) (No change.)

(g) Funding for benevolent programs, including but not limited to pension plans, health and life insurance plans, etc., will be considered reasonable if such program funding on an annual basis is at least 70 percent of the total statutory allocation. Whether or not a program will be considered a "benevolent program" will be decided upon application to the Racing Commission. Annual benevolence program funding below 70 percent of the total statutory allocation requires justification satisfactory to the Commission. The adminis-

trative costs and overhead expenses of administering the horsemen's organizations including benevolent programs may not exceed 30 percent of the total allocated by statute unless and to the extent specifically authorized in advance by the Racing Commission.

1. Funding of the existing pension plan entitled H.B.P.A. (Sponsoring Organization) pension plan, Sponsor No. 210657121, Plan No. 001, shall take priority over all other benevolent programs in order to ensure the continuation of the plan. Each race track will be required to submit an amount derived from the horsemen's organizations share of purse money available for distribution (2.9 percent or 2.5 percent statutorily allocated funds) directly to the pension plan. The amount of this contribution will be determined by the plan administrator to ensure full and current funding of the plan in accordance with all applicable Federal and State laws. All remaining statutorily allocated funds shall be available for programs designated to aid the horsemen pursuant to rules and regulations, orders and directives of the New Jersey Racing Commission and its Executive Director.

(h)-(k) (No change.)

## (b)

**NEW JERSEY RACING COMMISSION****Thoroughbred Rules  
Horsemen Associations****Proposed Amendment: N.J.A.C. 13:70-1.30**

Authorized By: New Jersey Racing Commission,

Bruce H. Garland, Executive Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1990-191.

Submit written comments by May 16, 1990 to:

Bruce H. Garland, Executive Director  
New Jersey Racing Commission  
200 Woolverton Street  
CN 088  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendment would provide a definition for the term "horseman" in the context of individuals that will participate in electing a horseman's organization that will represent the horsemen in administering the programs authorized by statute and to negotiate contracts with track associations for the horsemen's benefit. This proposed amendment defining horseman pertains only to this subchapter.

**Social Impact**

This proposed amendment would not affect the general public in any way. The proposed amendment would allow individuals to determine any horsemen's organizations to represent them in the negotiations of contracts on their behalf and to designate the horsemen's organizations that will administer statutorily allocated funds on behalf of the horsemen.

**Economic Impact**

This proposed amendment would have no economic impact on the racing industry or the general public.

**Regulatory Flexibility Statement**

The proposed amendment imposes no reporting, recordkeeping or compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment provides a definition for "horseman", a type of individual.

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

13:70-1.30 Horsemen associations

(a)-(k) (No change.)

(l) For the purpose of this subchapter, in determining eligibility to vote in an election to ascertain a horsemen's organization to represent the horsemen, a horseman is defined as an individual licensed as either an owner or trainer by the New Jersey Racing Commission in the current calendar year or preceding year, and said individual shall have started at least one horse during the current or preceding calendar year.

**(a)**

**NEW JERSEY RACING COMMISSION  
Thoroughbred Rules Administering Medication to  
Respiratory Bleeders**

**Proposed Amendment: N.J.A.C. 13:70-14A.9**

Authorized By: New Jersey Racing Commission,  
Bruce H. Garland, Executive Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1990-190.

Submit written comments by May 16, 1990 to:  
Bruce H. Garland, Executive Director  
New Jersey Racing Commission  
200 Woolverton Street, CN 088  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendment to N.J.A.C. 13:70-14A.9 expands the certification of respiratory bleeders from other jurisdictions by adding bleeders certified in all other racing jurisdictions or bleeders certified by a veterinarian employed by the regulatory body of a particular jurisdiction. For example, the amendment will allow certified bleeders from Kentucky and California to race in New Jersey without having to come to New Jersey and be observed to have bled in New Jersey. This amendment eliminates the current requirement that such certification be based upon criteria substantially similar to New Jersey's, and that the Commission Executive Director annually report on such criteria, for certification by the Commission.

**Social Impact**

The proposed amendment provides for the acceptance of certification of respiratory bleeders from racing commissions in other jurisdictions rather than require separate certification in New Jersey. This will benefit horsemen and allow a greater movement between racing jurisdictions in this region.

**Economic Impact**

There will be no additional expense to the race tracks, licensees, public, State, or the Racing Commission as a result of this amendment. In fact, to the extent that the handle is increased due to the increased availability of horses, there could be a positive economic impact in all of these categories.

**Regulatory Flexibility Statement**

The proposed amendment imposes no reporting, record keeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment permits the stewards to allow controlling medication to be administered to respiratory bleeders certified or listed as such in another jurisdiction.

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

13:70-14A.9 Administering medication to respiratory bleeders

(a) The stewards may permit the administration of medication to control respiratory bleeding in animals that:

1.-3. (No change.)

4. Have been certified as respiratory bleeders in **other racing jurisdictions by a veterinarian employed by that jurisdiction's regulatory body or have been placed on another racing jurisdiction's respiratory bleeder's list.** [wherein such certification is pursuant to criteria substantially similar to this section. The Executive Director of the Commission shall make annual report to the Commission of those jurisdictions in compliance herewith, which compliance shall be certified by the Commission.]

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

**(b)**

**NEW JERSEY RACING COMMISSION  
Harness Rules  
Horsemen Associations**

**Proposed Amendment: N.J.A.C. 13:71-1.25**

Authorized By: New Jersey Racing Commission,  
Bruce H. Garland, Executive Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1990-192.

Submit written comments by May 16, 1990 to:  
Bruce H. Garland, Executive Director  
New Jersey Racing Commission  
Woolverton Street  
CN 088  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendment would provide a definition for the term "horseman" in the context of individuals that will participate in electing a horseman's organization that will represent the horsemen in administering the programs authorized by statute and to negotiate contracts with track associations for the horsemen's benefit. This proposed amendment defining horseman pertains only to this subchapter.

**Social Impact**

This proposed amendment would not affect the general public in any way. The proposed amendment would allow individuals to determine any horsemen's organizations to represent them in the negotiations of contracts on their behalf and to designate the horsemen's organizations that will administer statutorily allocated funds on behalf of the horsemen.

**Economic Impact**

This proposed amendment would have no economic impact on the racing industry or the general public.

**Regulatory Flexibility Statement**

The proposed amendment imposes no reporting, recordkeeping or compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment provides a definition for "horseman", a type of individual.

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

13:71-1.25 Horsemen's associations

(a)-(k) (No change.)

**(l) For the purpose of this subchapter, in determining eligibility to vote in an election to ascertain a horsemen's organization to represent the horsemen, a horseman is defined as an individual licensed as either an owner or trainer by the New Jersey Racing Commission in the current calendar year or preceding year, and said individual shall have started at least one horse during the current or preceding calendar year.**

**(c)**

**NEW JERSEY RACING COMMISSION  
Harness Rules  
Administering Medication to Respiratory Bleeders**

**Proposed Amendment: N.J.A.C. 13:71-23.8**

Authorized By: New Jersey Racing Commission,  
Bruce H. Garland, Executive Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1990-193.

Submit written comments by May 16, 1990 to:  
Bruce H. Garland, Executive Director  
New Jersey Racing Commission  
Woolverton Street  
CN 088  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The proposed amendment to N.J.A.C. 13:71-23.8 expands the certification of respiratory bleeders from other jurisdictions by adding bleeders certified in all other racing jurisdictions or bleeders certified by a veterinarian employed by the regulatory body of a particular jurisdiction. For example, the amendment will allow certified bleeders from Kentucky and California to race in New Jersey without having to come to New Jersey and be observed to have bled in New Jersey. This amendment eliminates the current requirement that such certification be based upon criteria substantially similar to New Jersey's, and that the Commission Executive Director annually report on such criteria, for certification by the Commission.

#### Social Impact

The proposed amendment provides for the acceptance of certification of respiratory bleeders from racing commissions in other jurisdictions rather than require separate certification in New Jersey. This will benefit horsemen and allow a greater movement between racing jurisdictions in this region.

#### Economic Impact

There will be no additional expense to the race tracks, licensees, public, State, or the Racing Commission as a result of this amendment. In fact, to the extent that the handle is increased due to the increased availability of horses, there could be a positive economic impact in all of these categories.

#### Regulatory Flexibility Statement

The proposed amendment imposes no reporting, record keeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment permits the judges to allow controlling medication to be administered to respiratory bleeders certified or listed as such in another jurisdiction.

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

13:71-23.8 Administering medication to respiratory bleeders

(a) The judges may permit the administration of medication to control respiratory bleeding in animals that:

1.-2. (No change.)

3. Have been certified as respiratory bleeders in **other racing jurisdictions by a veterinarian employed by that jurisdiction's regulatory body or have been placed on another racing jurisdiction's respiratory bleeder's list.** [wherein such certification is pursuant to criteria substantially similar to this section. The Executive Director of the Commission shall make annual report to the Commission of those jurisdictions in compliance herewith, which compliance shall be certified by the Commission.]

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

### (a)

## OFFICE OF EMERGENCY TELECOMMUNICATIONS SERVICES

### 9-1-1 Emergency Telecommunication System

#### Proposed New Rules: N.J.A.C. 13:81

Authorized By: Robert J. Del Tufo, Attorney General,  
Department of Law and Public Safety.

Authority: N.J.S.A. 52:17C-3(b), 52:17C-15(b) (P.L. 1989, c.3,  
secs. 3 and 15).

Proposal Number: PRN 1990-194.

Submit written comments by May 16, 1990 to:

Captain Joseph C. Saiia, Director  
Office of Emergency Telecommunications Services  
New Jersey State Police Headquarters  
P.O. Box 7068  
West Trenton, New Jersey 08628-0068

The agency proposal follows:

#### Summary

P.L. 1989, c.3 (N.J.S.A. 52:17c-1 et seq.) was enacted on January 18, 1989. It requires the implementation of a Statewide, enhanced 9-1-1 emergency telephone system within three years of the date of enactment. Once the system is in place, those facing an emergency will be able to dial 9-1-1 anywhere in the State and be connected to a Public Safety Answering Point (PSAP). At the same time, the PSAP will automatically receive the name and address registered to the telephone placing the call and the identity of the police, fire and emergency medical services agencies which are responsible for that location. The call-taker at the PSAP will then be able to transfer the call to the appropriate emergency service agency at the press of a button or dispatch the emergency service directly, depending on the option chosen by the localities it serves.

The Office of Emergency Telecommunications Services (OETS) in the Department of Law and Public Safety, Division of State Police and the New Jersey 9-1-1 Commission are charged with the implementation of the 9-1-1 legislation. The State of New Jersey 9-1-1 Emergency Number Plan was adopted in January of 1990. The proposed rules are intended to implement the 9-1-1 legislation and the State Plan. Copies of the State Plan may be obtained from OETS at the address indicated above for sending comments on the proposed rules. It should be noted, however, that these proposed rules differ, in some respects, from the State Plan, which will be amended once the rules have been adopted.

Subchapter 1 of the proposed rules contains general provisions, including the purpose of the rules, definitions of the terms used therein, and provision for the inspection of PSAP's and Public Safety Dispatch Points (PSDP) and the enforcement of the requirements of the rules. Subchapter 2 outlines the staffing and equipment requirements for PSAP's, and sets forth the operational standards which must be met. Subchapter 3 sets forth the staffing and equipment requirements for PSDP's as well as their operational standards.

Subchapter 4 sets forth the design features for the 9-1-1 network which must be provided by the telephone companies doing business in New Jersey. Subchapter 4 also sets forth requirements for maintenance of the system and backup provisions in the event of component failure.

Subchapter 5 sets forth the responsibilities of municipalities, including the appointment of a municipal 9-1-1 coordinator and the assembling and provision of information concerning the emergency services agencies which serve the municipalities for inclusion in the 9-1-1 database. Subchapter 5 also sets forth the requirements for the preparation and submission of Municipal 9-1-1 Plans, which are due within 60 days of the adoption of the rules.

Subchapter 6 sets forth the responsibilities of the counties, including the appointment and duties of the county 9-1-1 coordinator and the preparation of the county 9-1-1 plans, which are due within 120 days of the adoption of the rules.

Subchapter 7 requires cellular telephone companies doing business in New Jersey to provide certain cell-specific information so that 9-1-1 emergency calls received over a cellular mobile telephone may be routed to the appropriate PSAP.

Subchapter 8 requires suppliers of 9-1-1 equipment to obtain OETS's approval prior to connection of their equipment to the New Jersey 9-1-1 network. It also prohibits the use of certain automatic dialing devices and devices to block outgoing 9-1-1 calls.

Subchapter 9 requires all public telephones, including coin and credit card telephones, to be configured to allow a caller to dial and complete a 9-1-1 call without inserting a coin or any other device, and requires the posting of 9-1-1 instructions on each such telephone.

Finally, subchapter 10 sets forth requirements for the use of the phrase "9-1-1" and the publication of emergency numbers.

#### Social Impact

The enactment and implementation of the 9-1-1 legislation in New Jersey is the culmination of a study process which, in the United States, began in 1967 when the President's Commission on Law Enforcement and Administration of Justice recommended that a "single number should be established" for reporting police emergencies. In January of 1986, the Emergency Response System Study Commission recommended the enactment of legislation to create a Statewide, enhanced 9-1-1 emergency telephone system in the State of New Jersey. As noted, the present legislation was enacted in January of 1989.

The New Jersey 9-1-1 system will allow a person dialing 9-1-1 anywhere in the State to be connected automatically, without charge, to a PSAP operated on a 24-hour basis, seven days a week, servicing the area in

which the caller's telephone is located. The PSAP attendant receiving the call will have a display of the caller's telephone number, address and the identified emergency response agency serving that location. The PSAP will dispatch directly or transfer to the appropriate PSDP through single button transfer.

At present, except in the limited areas in which basic 9-1-1 is available, New Jersey residents must use location specific seven digit telephone numbers to summon police, fire and emergency medical services, sometimes utilizing different numbers for each such service in the same area. The Statewide 9-1-1 system will permit the use of the simple, easily remembered numbers "9-1-1" to summon all emergency services from any telephone within the State. Because the person answering the call will receive identification of the telephone and location from which the call is placed and the identity of the appropriate emergency services, the response time will be minimized. In those situations in which the caller is unable to identify him or herself, the call taker will have that information automatically available.

#### Economic Impact

The bulk of the cost of the New Jersey 9-1-1 system will be borne by the State of New Jersey, which is responsible for payment of costs related to the network, including the dedicated telephone lines, the network switching equipment and the database.

The cost to the local municipalities will be limited to the equipment and staff necessary for a PSAP and/or PSDP operation. If municipalities determine to participate in joint PSAPs or dispatch operations, these costs may be shared on a regional or county wide basis.

The cost of the PSAP equipment will be directly proportional to the number of 9-1-1 call-taker positions needed, as set forth in the rules. It is currently estimated that the cost for PSAP call-taker equipment, if purchased, will range between \$7,500 to \$10,000 per position. OETS anticipates that the equipment will also be available for leasing on a monthly fee basis. For PSAPs not currently equipped as required in these rules, the additional cost of the other required PSAP equipment will range between \$2,000 and \$20,000. Because the State will be paying for some telephone trunk lines which may now be paid for by the municipalities, there is a potential for financial savings to offset the cost.

Cellular and public telephone companies will incur a minor cost in compliance with the requirements of N.J.A.C. 13:81-7 and 9, respectively.

#### Regulatory Flexibility Statement

The proposed rules do not place any bookkeeping, record keeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., except to the extent such small businesses may seek to manufacture and/or distribute equipment to be connected to the New Jersey 9-1-1 network. Such equipment must be approved by OETS in order to safeguard the network from equipment which may not meet established telephone standards and could cause serious harm to the network. OETS is not presently aware of any existing manufacturer of 9-1-1 equipment which would meet the applicable definition of a small business under the Act.

Full text of the proposed new rules follows:

### CHAPTER 81

#### 9-1-1 EMERGENCY TELEPHONE SYSTEM

##### SUBCHAPTER 1. GENERAL PROVISIONS

###### 13:81-1.1 Purpose

The chapter establishes the technical requirements and operational standards for all components of the Statewide 9-1-1 Enhanced Emergency Telephone System. It defines and allocates responsibility for planning, equipping, staffing, establishing, operating and maintaining Public Safety Answering Points, Public Safety Dispatch Points, and the Enhanced 9-1-1 Network, and it defines and allocates responsibility for providing information necessary to establish and maintain the Automatic Location Information capability of the System.

###### 13:81-1.2 Definitions

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

"Automatic Location Identification (ALI)" means the automatic display of the calling party's telephone number, address and supplementary information at the PSAP.

"Automatic Number Identification (ANI)" means the automatic display of the calling party's telephone number.

"Average busiest hour" means the one-hour period during each week in which the most emergency telephone calls are received.

"Call relay" means pertinent information is received by the PSAP operator and relayed to the proper dispatch center.

"Call referral" means callers are referred to secondary numbers for response to their needs.

"Call transfer" means the PSAP operator determines the proper responding agency and connects the caller to that agency which then performs the necessary dispatching.

"Calling party hold" means a feature that prevents the calling party from disconnecting the call even if the caller hangs up the telephone.

"Computer Aided Dispatch (CAD)" means a computer system designed to assist PSAP/PSDP operators and dispatchers to increase the efficiency and accuracy of dispatching public safety services.

"Dedicated trunks" means telephone lines used exclusively for transmission of 9-1-1 calls. Other trunks are shared by multiple telephone numbers.

"Dial tone first" means the allowance of a 9-1-1 or "0" Operator calls to be completed without the deposit of a coin or credit card.

"Direct dispatch" means 9-1-1 call answering and public safety dispatching is done by the personnel at the PSAP.

"Emergency Service Zone" (ESZ) means the geographical area having a unique combination of police, fire, and EMS services.

"Enhanced 9-1-1" means an emergency telephone system that provides sophisticated features via computers and electronic switches so that calls can be selectively routed to one of multiple PSAPs and, when answered, provides an ANI and/or ALI display at the PSAP.

"Forced disconnect" means the capability of a PSAP to disconnect a 9-1-1 call to avoid caller jamming of the incoming phone lines.

"Instant playback recorder" means a device that records voice or voice/ALI data and is capable of instantly replaying the same.

"Logging recorder" means a device that electronically records all voice communications and transactions on the 9-1-1 network at PSAPs and PSDPs. A logging recorder provides date/time information, is operative on a continuous or controlled basis, and is primarily for archival purposes.

"Master Street Address Guide (MSAG)" means the computer file containing address ranges and communities that define the emergency service zones.

"OETS" means the Office of Emergency Telecommunications Services in the Department of Law and Public Safety.

"P.01 grade of service" means a grade of emergency telephone service where no more than one call in 100 attempts will be blocked during the average busiest hour.

"Public Safety Answering Point (PSAP)" means the first point of reception of a 9-1-1 call.

"Public Safety Dispatch Points (PSDP)" means a location which provides dispatch services for one or more public safety agencies.

"Public safety agency" means a functional division of a public agency which provides firefighting, police, EMS, or other emergency service.

"Ringback" means a feature that permits the PSAP to ring the hung up telephone on a held circuit.

"Ringdown time" means the length of time that a phone rings before it is answered. This factor affects both the number of telephone lines and the number of 9-1-1 call-takers that are required at the PSAP.

"Selective routing" means a feature that routes a 9-1-1 call from a central office to the designated PSAP based upon the identified number of the calling party, or in the case of a cellular call, a unique seven-digit identification number for each cell site, or if so configured, each sector at the cell site.

"TDD" means a telecommunication device for the deaf.

###### 13:81-1.3 Inspection

OETS will cause an inspection to be made of each PSAP and PSDP prior to start-up and, thereafter, periodically, at announced or unannounced times, to determine whether the facility meets the technical and operational standards specified in this chapter and in N.J.S.A.

52:17C-1 to 52:17C-16. This inspection may include an inspection of any records required by this chapter.

#### 13:81-1.4 Enforcement

OETS will issue a Notice of Noncompliance upon discovery of any failure to comply with this chapter or with the provisions of N.J.S.A. 52:17C-1 to 52:17C-16. Such Notice will allow 10 days for correction of any noncompliance noted, unless a shorter compliance time is warranted under the circumstances. If compliance is not achieved as specified in the Notice of Noncompliance, OETS will take appropriate enforcement action.

### SUBCHAPTER 2. PUBLIC SAFETY ANSWERING POINTS: STAFFING AND EQUIPMENT REQUIREMENTS AND OPERATIONAL STANDARDS

#### 13:81-2.1 PSAP: required and recommended equipment

(a) Each PSAP call-taker position shall have the following equipment:

1. Telephone: A telephone which will enable the call-taker to utilize all the enhanced features of the 9-1-1 network;

2. Conference and transfer: Conference and transfer "push-button" type buttons which will allow the PSAP operator to do single button transfers and conferences to other PSAPs and/or Public Safety Dispatch Points (PSDPs) as well as other telephones on the public switched telephone network;

3. ANI display: A device which displays the telephone number from which the call was made. Typically, this display is also used for error indication and other messages generated by 9-1-1 telephone equipment;

4. ALI screen: A computer-like screen which displays the address location information (ALI) and telephone number of the telephone from which the 9-1-1 call was made, and which lists the primary police, fire, and EMS agency having jurisdiction in the area in which the address is located; and

5. Instant playback recorders: Either an:

i. Instant playback voice recorder that will record and is capable of instantly replaying a 9-1-1 call; or

ii. Instant playback voice/ALI screen recorder that will record and is capable of instantly replaying a 9-1-1 call and ALI data.

(b) Each PSAP shall have the number of fully equipped call-taker positions sufficient to provide a ringdown time of no more than 10 seconds for 90 percent of all 9-1-1 calls during the average busiest hour of the day.

(c) Each PSAP shall have the number of telephone lines necessary to provide a P.01 grade of service.

(d) Each PSAP shall be equipped with a 9-1-1 line printer, in the immediate vicinity of the PSAP operators, which prints a teleprinter record for each 9-1-1 call indicating the caller's telephone number, the time the 9-1-1 telephone equipment seized the line, the time the call was answered, the time the call was transferred (if applicable), the time the call was disconnected, the trunk line the call came in on, and the call-taker position in the PSAP.

(e) Each PSAP shall provide for the hearing or speech impaired through either:

1. A TDD: A telecommunications device for the deaf or speech impaired which is available for immediate connection to the 9-1-1 network at all PSAPs; or

2. Equipment that permits the PSAP operator to single button transfer the caller to a location approved by OETS as prepared to take and handle such calls.

(f) Each 9-1-1 line or each 9-1-1 telephone shall be connected to a logging recorder that records and time-date stamps the time and disposition of all 9-1-1 calls.

(g) Each PSAP shall maintain a means of communication other than the 9-1-1 system to permit interagency communications in the event of a failure or breakdown in the 9-1-1 system.

(h) The following PSAP equipment is recommended but not required:

1. Emergency generators for all critical electric circuits;

2. An uninterruptable power supply (UPS) that offers a high degree of protection from power surges and spikes and has a capacity sufficient to keep all 9-1-1 telephone equipment fully operative for a minimum of 15 minutes;

3. Lightning protection consisting of a state-of-the-art common ground, ring-type lightning protection system that will minimize catastrophic damage and downtime due to electrical storms. Cad-welding should be used to the extent feasible on all earth grounds; and

4. Logging recorders for all radio channels and other public safety emergency telephone lines, if the PSAP is also a PSDP.

#### 13:81-2.2 PSAP: required staffing

(a) Each PSAP shall be staffed 24 hours a day, seven days a week.

(b) Each PSAP shall, at all times, be staffed with the number of call-takers necessary to permit the PSAP to answer all calls within 10 seconds, except that during the average busiest hour 10 percent of the calls may be answered within 20 seconds.

(c) Each call-taker position in a PSAP shall be staffed by a person certified by OETS as qualified on the basis of successful completion of a training program approved or adopted by the 9-1-1 Commission.

(d) A PSAP serving a municipality identified by the most recent census as having a non-English speaking population of greater than five percent of the population, shall either:

1. Have a language interpreter available at the PSAP; or

2. Have a language interpreter immediately available, under contract, by telephone conference call.

#### 13:81-2.3 PSAP: operational standards

(a) Each PSAP shall be operated so as to comply with the following operational standards:

1. All components of the 9-1-1 network shall meet or exceed a P.01 grade of service which is no more than one busy signal in 100 call attempts in the average busiest hour.

2. All PSAPs shall be operated on a full-time basis, 24 hours a day, seven days a week.

3. All 9-1-1 calls should be answered in 10 seconds, except that 10 percent of the calls received during the average busiest hour may be answered within 20 seconds.

4. No more than two percent of incoming 9-1-1 calls shall overflow to an alternate PSAP.

5. All 9-1-1 calls shall be answered with a response such as "9-1-1 Emergency, what are you reporting?" or "9-1-1, may I help you?" No 9-1-1 call shall be answered with a response that identifies the PSAP as a police department, fire department, or emergency service or that gives a geographical or political location of the PSAP.

6. Following receipt of a 9-1-1 call requiring a dispatch of emergency medical, emergency police or emergency fire services, a PSAP call-taker, within 20 seconds for 90 percent of the calls received, will dispose of the call as follows:

i. If the PSAP also serves as a PSDP with respect to some or all emergency services, the PSAP call-taker shall transfer the call to the appropriate dispatcher;

ii. If the PSAP does not serve as a PSDP, the PSAP call-taker shall transfer the call to the appropriate PSDP or PSAP, unless the circumstances require a different approved disposition.

7. No call-taker shall transfer a 9-1-1 call without first advising the calling party that the call is being transferred and that the caller should remain on the line until the call is connected. No "blind transfers" are permitted.

8. Following receipt of a 9-1-1 call that is not emergent and does not require emergency services, the call-taker shall clear the line as quickly as possible under the circumstances. If circumstances permit, the call-taker may, if appropriate, refer the caller to the appropriate public safety agency, either verbally or through a pre-recorded message.

#### 13:81-2.4 PSAP: record keeping

(a) Each PSAP shall maintain the following:

1. Tape recordings produced by the logging recorder and all documents or records related to 9-1-1 calls in a secured area for no less than 31 days; and

2. A current listing of PSAP call-takers, which indicates the call-takers' certification date, at all times.

#### 13:81-2.5 PSAP: formation

Nothing contained in this chapter shall be construed to prohibit or require in any manner the formation of multi-agency, multi-jurisdictional, regional or county-wide PSAPs. However, the formation of PSAPs that serve groups of municipalities is encouraged in the interest of reducing costs and increasing the efficiency of administration.

### SUBCHAPTER 3. PUBLIC SAFETY DISPATCH POINTS: STAFFING AND EQUIPMENT REQUIREMENTS AND OPERATIONAL STANDARDS

#### 13:81-3.1 PSDP: required and recommended equipment

(a) Each PSDP shall be equipped with basic or integrated PSAP telephones which will allow 9-1-1 calls to be transferred from the New Jersey Bell 9-1-1 tandem central offices by either direct connection or seven-digit transfers over the shared public network as determined by OETS in consultation with the county 9-1-1 coordinator.

(b) Each PSDP shall be equipped with the number of telephone lines sufficient to permit the PSDP to answer 90 percent of the PSAP transfers within 10 seconds during the average busiest hour.

(c) A PSDP may elect to have enhanced 9-1-1 call-taker equipment such as ANI displays, ALI screens, and line printers, as approved by OETS in consultation with the county 9-1-1 coordinator.

#### 13:81-3.2 PSDP: required staffing

(a) Each PSDP shall, at all times, be staffed with the number of dispatchers necessary to permit the PSDP to comply with the level of dispatch performance established by the local governing agencies.

(b) Each dispatcher shall be a person certified by OETS as qualified on the basis of successful completion of a training program approved or adopted by the 9-1-1 Commission.

#### 13:81-3.3 PSDP: record keeping

(a) Each PSDP shall maintain the following:

1. All documents or records related to 9-1-1 calls in a secured area for no less than 31 days; and
2. A current listing of PSDP dispatchers, which indicates the dispatchers' certification date, at all times.

### SUBCHAPTER 4. NETWORK FEATURES AND DESIGN

#### 13:81-4.1 Network features

(a) The following features shall be incorporated in the 9-1-1 enhanced network and will, where appropriate, be provided for in any contract for such telephone services:

1. Selective routing: A feature that routes a 9-1-1 call from a central office to the designated PSAP based upon the identified number of the calling party or, in the case of a cellular call, a unique seven-digit identification number for each cell site, or if so configured, each sector at the cell site;

2. Number identification (ANI): The automatic display of the seven-digit number used to place a 9-1-1 call. Additionally, the last digit of the area code is displayed;

3. Automatic location identification (ALI): The automatic display of information on a computer-like screen which displays the geographical location of the telephone used to place a 9-1-1 call;

4. Idle-circuit-tone application: An idle circuit tone which enables the PSAP attendant to distinguish between calls that have been abandoned before they are answered and calls where the calling party is connected but unable to speak;

5. Switchhook status indication: A feature which provides the PSAP with audible and visual indications of whether a 9-1-1 call which has been received and put on hold is still on hold or has disconnected. This feature helps ensure that a caller's line is not held up unnecessarily after the emergency call is completed;

6. Forced disconnect: A feature which enables the PSAP to release a connection (hang up to clear the line) on a 9-1-1 call even if the calling party has not hung up. The time required for a forced disconnect varies with telephone central office switching equipment, but is

generally under 10 seconds. This feature prevents intentional jamming of 9-1-1 lines by individuals who dial 9-1-1 and refuse to hang up;

7. Alternate routing: A feature which provides backup for a PSAP by routing 9-1-1 calls to an alternate PSAP when all lines to the intended PSAP are busy or out of service;

8. Default routing: A feature which provides backup for a PSAP by routing 9-1-1 calls to a location based on the originating local trunk group when an incoming 9-1-1 call cannot be selectively routed due to an ANI failure, garbled digits, party-line service or multi-party service, or for any other reason;

9. Selective transfer: A feature which allows call-takers to transfer incoming calls to PSDPs by depressing a single "type of service" button;

10. Call detail recording: A teleprinter record for each 9-1-1 call indicating the caller's telephone number, the time the 9-1-1 telephone equipment seized the line, the time the call was answered, the time the call was transferred (if appropriate), the time the call was disconnected, the trunk line the call came in on, and the call-taker position in the PSAP;

11. Protected circuits: All facilities and equipment associated with, included in or attached to the 9-1-1 network shall be equipped with protective devices to prevent accidental worker contact. Each protected termination shall be clearly identified, and no protected 9-1-1 circuits shall be opened, grounded, short-circuited, or manipulated in any way unless the appropriate PSAP has released the circuit;

12. Calling party hold: (Reserved); and

13. Ringback: (Reserved).

#### 13:81-4.2 Network design

(a) The following features shall be incorporated in the 9-1-1 enhanced network design and will, where appropriate, be provided for in any contract for such telephone services:

1. A three or more tandem switch architecture, featuring redundant, diversely routed links to all local central offices and between the tandems. This design shall support both integrated PSAPs which do not require on-site control cabinets or switches as well as conventional PSAPs;

2. A network protection plan that permits network recovery from a catastrophic switch failure;

3. A mechanism to instantaneously provide switching and rerouting to a back-up 9-1-1 tandem in the event of a 9-1-1 tandem failure. The back-up 9-1-1 tandem shall provide selective routing, in a normal fashion, to the designed PSAP until the failed tandem has been restored;

4. A method to instantaneously default 9-1-1 calls to a PSAP or PSDP in accordance with the respective county 9-1-1 plan, in the event a 9-1-1 call cannot be routed to a 9-1-1 tandem;

5. Monitoring of all 9-1-1 tandems on a 24-hour, seven day basis by a 9-1-1 switching control center (SCC). The 9-1-1 SCC's responsibilities include the maintenance and repair of the 9-1-1 tandem switches. The 9-1-1 SCC acts as the central point of contact for all PSAP trouble reports via a toll free 800 number. The 9-1-1 SCC is also responsible for the expeditious repair of any other 9-1-1 network components affecting the critical 9-1-1 service; and

6. Monitoring of the Statewide 9-1-1 network providing 24-hour coverage, with priority 9-1-1 traffic flow from all dedicated lines, end offices, sector tandems, and operator services position system tandems into the 9-1-1 network.

### SUBCHAPTER 5. MUNICIPALITIES: RESPONSIBILITY TO PROVIDE DATA FOR AUTOMATIC LOCATION IDENTIFICATION AND TO PLAN, EQUIP, STAFF AND OPERATE PSAPs AND PSDPs

#### 13:81-5.1 Municipal 9-1-1 coordinator

(a) The governing body of each municipality shall appoint a municipal 9-1-1 coordinator who shall coordinate the 9-1-1 implementation and the operation of 9-1-1 activities within the municipality in accordance with N.J.S.A. 52:17C-1 to 52:17C-16 and the rules incorporated in this chapter.

(b) The municipal 9-1-1 coordinator, after consultation with representatives of local public safety agencies, and the State Police, shall:

1. Prepare a draft municipal plan for implementation of 9-1-1 enhanced service throughout the municipality. The draft plan shall specify:

i. The number and locations of all PSAPs and PSDPs serving the municipality;

ii. The procedure each PSAP will employ for continuing essential services during the loss of commercial power;

iii. The membership and organizational characteristics of each PSAP and PSDP;

iv. The number of lines and call-taker positions that each PSAP will utilize; and

v. Alternate communications as required by section 13:80-2.1(g); and

2. Submit the draft plan and background documentation necessary to determine the adequacy of the plan to the governing body of the municipality for approval in sufficient time to permit the governing body of the county to comply with the remaining provisions of this subchapter.

13:81-5.2 Municipalities: responsibility to provide ALI data

(a) The governing body of each municipality shall provide the data necessary for the Automatic Location Identification capability of the 9-1-1 Emergency Telecommunication System as follows:

1. Within 60 days of receipt of the appropriate map through OETS;

i. Correct or verify the accuracy of the street and address information;

ii. Where necessary, supplement the street and address information; and

iii. Label the map to indicate political boundaries, fire service zones, emergency medical service zones and police service zones; and

2. Following submission of the initial information, update the map when required by changes in or the addition of streets and addresses in the municipality.

13:81-5.3 Municipalities: 9-1-1 plan

(a) Except as provided in (b) below, within 60 days of the effective date of this chapter, the governing body of each municipality shall provide the county 9-1-1 coordinator with a written plan that identifies:

1. PSAPs and PSDPs that will be utilized by the municipality, either alone or in conjunction with other municipalities, to service the municipality; and

2. Alternate PSAPs.

(b) Municipalities located in counties that currently utilize a county-wide PSAP need not supply the written plan described in (a) above, if the municipality indicates in writing that it will continue to utilize its county-wide PSAP. If the municipality at any time discontinues its association with its county-wide PSAP or its county-wide PSAP fails to gain approval as required by N.J.A.C. 13:81-6.2, the municipality must submit a plan within 60 days.

#### SUBCHAPTER 6. COUNTIES: RESPONSIBILITY TO PLAN AND IMPLEMENT ENHANCED 9-1-1 SERVICE THROUGHOUT THE COUNTY

13:81-6.1 County 9-1-1 coordinator

(a) The governing body of each county shall appoint a county 9-1-1 coordinator who shall coordinate the 9-1-1 implementation and the operation of 9-1-1 activities within the county in accordance with N.J.S.A. 52:17C-1 to 52:17C-16 and the rules incorporated in this chapter.

(b) The county coordinator, after consultation with representatives of the county, the municipalities, local public safety agencies, and the State Police, and utilizing the information supplied by the municipalities, shall:

1. Prepare a draft county plan for implementation of 9-1-1 enhanced service throughout the county. The draft plan shall specify:

i. The number and locations of all PSAPs and PSDPs serving municipalities within the county;

ii. The procedure each PSAP will employ for continuing essential services during the loss of commercial power;

iii. The membership and organizational characteristics of each PSAP and PSDP; and

iv. The number of lines and call-taker position that each PSAP will utilize; and

2. Submit the draft plan and background documentation necessary to determine the adequacy of the plan to the county governing body for approval in sufficient time to permit the governing body of the county to comply with the remaining provisions of this subchapter.

13:81-6.2 Submission and approval of county plan

(a) No later than 120 days from the effective date of this chapter, the governing body of each county shall submit an enhanced 9-1-1 service utilization plan to the OETS for its review and approval.

(b) OETS will review the plan for compliance with N.J.S.A. 52:17C-1 to 52:17C-16 and this chapter. OETS shall act on each submission within 60 days, by either approving or disapproving it, or returning it to the county for revision.

13:81-6.3 Modification of county plan

A county plan that has been approved by OETS cannot be changed until a modified plan is submitted by the county and approved by OETS pursuant to N.J.A.C. 13:81-6.2(b).

#### SUBCHAPTER 7. CELLULAR PHONE COMPANIES: RESPONSIBILITY TO PROVIDE CELL-SITE INFORMATION

13:81-7.1 Cellular phone companies: responsibility

Each cellular mobile telephone company shall transmit to a New Jersey Bell 9-1-1 tandem, via a single common trunk group, a unique seven-digit identification number for each cell site, or if so configured, each sector at the cell site. This number will be selectively routed to a PSAP designated by OETS after consultation with county 9-1-1 coordinators and municipalities.

#### SUBCHAPTER 8. CONNECTIONS TO THE 9-1-1 SYSTEM: APPROVAL OF EQUIPMENT

13:81-8.1 Suppliers of 9-1-1 equipment: responsibility to obtain approval of equipment

(a) No vendor, manufacturer, or installer shall connect any device to the New Jersey 9-1-1 network that has not been approved by OETS as follows:

1. Manufacturers or suppliers of equipment proposed for connection to the 9-1-1 network shall submit application for type approval to OETS at least 90 days prior to a proposed connection.

2. OETS will grant type approval if the equipment is capable of performing its proposed 9-1-1 function, is sufficiently reliable to perform its proposed function and will not present a danger to the integrity of the system.

13:81-8.2 Automatic dial devices

No person shall connect to a telephone company network an automatic alarm or alerting device that causes the number 9-1-1 to be dialed. OETS has not approved any automatic dialing device.

13:81-8.3 Blockage of 9-1-1 calls

No person, firm or corporation shall program any telephone or associated equipment with outgoing access to the public switched network of a telephone company so as to prevent a 9-1-1 call from being transmitted from such telephone to a PSAP.

#### SUBCHAPTER 9. SUPPLIERS OF PUBLIC TELEPHONES

13:81-9.1 Suppliers of public telephones: responsibility to provide dial tone first equipment

As 9-1-1 emergency service becomes available in areas throughout the State and at least 30 days prior to the availability date as published by OETS or its agents, all public telephones in an area in which 9-1-1 service will become available, including coin and credit card telephones, both public and private, shall be configured to allow a caller to dial and complete a 9-1-1 call without inserting a coin or

any other device. On each such telephone, instructions on how to access the emergency enhanced 9-1-1 system shall be prominently displayed.

**SUBCHAPTER 10. PUBLICATION AND USE OF THE 9-1-1 NUMBER**

**13:81-10.1 Publishers of telephone number listings**

Any person who publishes a telephone listing including emergency numbers shall list "9-1-1" as the only "Emergency" number. Nothing in this section is intended to preclude a listing of the telephone numbers of police or fire departments or emergency medical services under headings other than "Emergency."

**13:81-10.2 Use of the 9-1-1 number**

No company or organization, either public or private, shall use the numerals 9-1-1 in the name of their company or organization or display the numerals 9-1-1 on their property or in their advertising, unless authorized by OETS for the purpose of publicizing or promoting 9-1-1 emergency services.

**13:81-10.3 Advertising and promoting emergency numbers**

No person or entity, including a public safety agency, shall advertise or otherwise promote the use of any telephone number for emergency response services other than "9-1-1," once 9-1-1 service becomes available in their respective response area.

AGENCY NOTE: Persons interested in acquiring a POISON GROUP CAPACITY TABLE or an ERLANG OVERFLOW TABLE for use in calculating the number of telephone lines, call-taker positions and staffing required in order to comply with N.J.A.C. 13:81-2.1 through 13:81-2.3, may acquire a copy of either or both tables by contacting:

Captain Joseph C. Saia  
 Director  
 Office of Emergency Telecommunications Services  
 New Jersey State Police Headquarters  
 P.O. Box 7068  
 West Trenton, New Jersey 08628-0068

**TRANSPORTATION**

**(a)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID**

**BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Speed Limit**

**Routes N.J. 172 and 171 in Middlesex County**

**Proposed Amendments: N.J.A.C. 16:28-1.80 and 1.86**

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Proposal Number: PRN 1990-180.

Submit comments by May 16, 1990 to:

Charles L. Meyers  
 Administrative Practice Officer  
 Department of Transportation  
 1035 Parkway Avenue  
 CN-600  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendments will establish "speed limit" zones along Routes N.J. 172 in the City of New Brunswick, and N.J. 171 in North Brunswick Township, Middlesex 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 governments made in the interest of safety, the Department's Bureau of Traffic Engineering and Safety

Programs conducted traffic investigations. The investigations proved that the establishment of "speed limit" zones along Routes N.J. 172 in the City of New Brunswick and N.J. 171 in North Brunswick Township, Middlesex County, was warranted.

The Department, therefore, proposes to amend N.J.A.C. 16:28-1.80 and 1.86, based upon the requests from the local governments and the traffic investigations.

**Social Impact**

The proposed amendments will establish "speed limit" zones along Routes N.J. 172 in the City of New Brunswick, and N.J. 171 in North Brunswick Township, Middlesex County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements, which cannot be specifically determined at this time. The Department will bear the costs for the installation of "speed limit" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

**Regulatory Flexibility Statement**

The proposed amendments do not place any bookkeeping, recordkeeping or other compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules primarily affect the motoring public.

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

**16:28-1.80 Route 172**

(a) The rate of speed designated for the certain part of State highway Route 172 described in this [section] subsection shall be established and adopted as the maximum legal rate of speed [thereat]:

[1. In the City of New Brunswick, Middlesex County 30 miles per hour between Commercial Avenue and Route 18 (Milepost 0.00 to 0.81).]

**1. For both directions of traffic:**

**i. In the City of New Brunswick, Middlesex County:**

**(1) 25 miles per hour between Commercial Avenue and Route N.J. 18 (Mileposts 0.00 to 0.81).**

**16:28-1.86 Route 171**

(a) The rate of speed designated for the certain part of State highway [route number] **Route 171** described in this [section] subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat]:

**1. For both directions of traffic:**

[i. 35 miles per hour between the Routes U.S. 1-U.S. 130-U.S. 171 traffic circle to the northerly terminus of Route 171 at the Raritan River Railroad crossing.]

**i. In North Brunswick Township, Middlesex County:**

**(1) 35 miles per hour between Routes U.S. 1-U.S. 130 and the City of New Brunswick-Township of North Brunswick corporate line (milepost 0.00 to 1.00).**

**(b)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID**

**BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Restricted Parking and Stopping**

**Routes U.S. 30 in Camden County and N.J. 47 in Gloucester County**

**Proposed Amendments: N.J.A.C. 16:28A-1.21 and 1.33**

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

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

Proposal Number: PRN 1990-176.

Submit comments by May 16, 1990 to:  
 Charles L. Meyers  
 Administrative Practice Officer  
 Department of Transportation  
 1035 Parkway Avenue  
 CN 600  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendments will establish "no stopping or standing" zones along Routes U.S. 30 in the Borough of Berlin, Camden County, and N.J. 47 in Franklin Township, Gloucester 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 governments made in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no stopping or standing" zones along Route U.S. 30 in the Borough of Berlin, Camden County, and N.J. 47 in Franklin Township, Gloucester County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.21 and 1.33, based upon the requests from the local governments and the traffic investigations.

**Social Impact**

The proposed amendments will establish "no stopping or standing" zones along Route U.S. 30 in Berlin Borough, Camden County, and N.J. 47 in Franklin Township, 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 governments will incur direct and indirect costs for mileage, personnel and equipment requirements which costs cannot be specifically determined at this time. The Department will bear the costs for the installation of "no stopping or standing" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

**Regulatory Flexibility Statement**

The proposed amendments do not place any bookkeeping, record keeping, or other compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules primarily affect the motoring public.

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

16:28A-1.21 Route U.S. 30

(a) The certain parts of State highway Route U.S. 30 described in this subsection shall be designed and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1. (No change.)

2. No stopping or standing [along both side] in the Borough of Berlin, Camden County:

**i. Along both sides:**

[i.] (1) From the Lindenwold Borough-Berlin Borough corporate line to the westerly curb line of Harker Avenue;

[ii.] (2) From the easterly curb line of East Taunton Avenue to the Berlin Borough-Waterford Township corporate line.

**ii. Westbound on the north side:**

(1) **From the easterly curb line of East Broad Street to a point 140 feet easterly therefrom.**

3.-6. (No change.)

(b) (No change.)

16:28A-1.33 Route N.J. 47

(a) The certain parts of State highway Route 47 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-2. (No change.)

3. No stopping or standing in Franklin Township, Gloucester County:

i.-iii. (No change.)

**iv. Along both sides:**

(1) **Beginning at the southerly curb line of New Street to the southerly curb line of Marshall Mill Drive.**

4.-10. (No change.)

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

**(a)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID  
 BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Time Limit Parking**

**Route N.J. 35 in Monmouth County**

**Proposed Amendment: N.J.A.C. 16:28A-1.25**

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

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

Proposal Number: PRN 1990-181.

Submit comments by May 16, 1990 to:

Charles L. Meyers  
 Administrative Practice Officer  
 Department of Transportation  
 1035 Parkway Avenue  
 CN-600  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendment will establish "time limit parking" zones along Route N.J. 35 in Red Bank Borough, Monmouth 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 government made in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "time limit parking" zones along Route N.J. 35 in Red Bank Borough, Monmouth County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.25 based upon the request from the local government and the traffic investigation.

**Social Impact**

The proposed amendment will establish "time limit parking" zones along Route N.J. 35 in Red Bank Borough, Monmouth County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements which cannot be specifically determined at this time. The local government will bear the costs for "time limit parking" zone signs. Motorists who violate the amended rule will be assessed the appropriate fine.

**Regulatory Flexibility Statement**

The proposed amendment does not place any bookkeeping, record keeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily affects the motoring public.

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

16:28A-1.25 Route 35

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

(e) The certain parts of State highway Route 35 described in this subsection shall be designated and established as "time limit parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established time limit parking zones:

1. (No change.)

- 2. In the Borough of Red Bank, Monmouth County:
  - i. Two-hour time limit parking 8:00 A.M. to 6:00 P.M. daily[.]:
    - [(1) Along both sides of Maple Avenue from Bergen Place to White Street.
    - (2) Along the northbound (westerly) side of Maple Avenue from Water Street to West Front Street.
    - (3) Along the northbound (easterly) side of Riverside Avenue from a point 600 feet north of Maple Avenue to a point 252 feet north of Allen Place.]
- (1) **Along both sides:**
  - (A) **Maple Avenue—From Bergen Place to White Street.**
- (2) **Along the northbound (westerly) side:**
  - (A) **Maple Avenue—From Water Street to West Front Street.**
- (3) **Along the northbound (easterly) side:**
  - (A) **Riverside Avenue—From a point 35 feet north of the northerly curb line of Allen Place to a point 217 feet northerly therefrom.**

**(a)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID**

**BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Restricted Parking and Stopping Route U.S. 9W in Bergen County**

Proposed Amendment: N.J.A.C. 16:28A-1.61  
 Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.  
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, and 39:4-199.  
 Proposal Number: PRN-1989-175.

Submit comments by May 16, 1990 to:  
 Charles L. Meyers  
 Administrative Practice Officer  
 Department of Transportation  
 1035 Parkway Avenue  
 CN-600  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendment will establish "no parking bus stop" zones along Route U.S. 9W in Alpine Borough, Bergen County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon a request from the local government, made in the interest of safety the Department's Bureau of Traffic Engineering and Safety Programs conducted a thorough investigation. The investigation proved that the establishment of "no parking bus stop" zones along Route U.S. 9W in Bergen County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.61, based upon the request from the local government and the traffic investigation.

**Social Impact**

The proposed amendment will establish "no parking bus stop" zones along Route U.S. 9W in Alpine Borough, Bergen County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements, which cannot be specifically determined at this time. The local government will bear the costs for "no parking bus stop" zones signs. Motorists who violate the rule will be assessed the appropriate fine.

**Regulatory Flexibility Statement**

The proposed amendment does not place any bookkeeping, recordkeeping or other compliance requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily affects the motoring public.

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

16:28A-1.61 Route U.S. 9W

(a) The certain parts of State highway U.S. 9W described in this subsection shall be designated and established as ["no parking"] "**no parking bus stop**" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

- 1.-5. (No change in text.)
- 6. Within Alpine Borough, Bergen County:
  - i. Along the easterly (northbound) side:
    - (1) Far side bus stops:
      - [(A) Closter Dock Road (120 feet);
      - (B) Old Dock Road (120 feet);
      - (C) Reo Vista Estate (120 feet);
      - (D) Montammy Road (120 feet).]
      - (A) **Hillside Avenue—Beginning at the prolongation of the northerly curb line of Hillside Avenue and extending 120 feet northerly therefrom;**
      - (B) **Montammy Road—Beginning at the prolongation of the northerly curb line on Montammy Road and extending 120 feet southerly therefrom.**
    - (2) Near side bus stops:
      - [(A) Hillside Avenue (120 feet);
      - (B) Lamont Observatory (120 feet);
      - (C) Alpine Scout Camp (entrance to Palisades Parkway southbound)—Beginning at the prolongation of the southerly curb line of the entrance to the Alpine Scout Camp and extending 140 feet southerly therefrom.]
      - (A) **Closter Dock Road—Beginning at the prolongation of the southerly curb line of Closter Dock Road and extending 120 feet southerly therefrom;**
      - (B) **The Esplanade—Beginning at the prolongation of the southerly curb line of the Esplanade and extending 120 feet southerly therefrom;**
      - (C) **Glen Goin Drive—Beginning at the prolongation of the southerly curb line of Glen Goin Drive extending 120 feet southerly therefrom;**
      - (D) **Lamont Observatory—Beginning at the southerly curb line of the Lamont Observatory entrance and extending 120 feet southerly therefrom.**
    - (3) **Mid-block bus stops:**
      - (A) **Closter Dock Road—Beginning 579 feet north of the prolongation of the northerly curb line of Closter Dock Road and extending 135 feet northerly therefrom.**
      - (B) **Timberline Drive—Beginning 150 feet north of the prolongation of the northerly curb line of Timberline Drive extending 135 feet northerly therefrom.**
  - ii. Along the westerly (southbound) side:
    - (1) Far side bus stops:
      - [(A) Lamont Observatory (120 feet);
      - (B) Montammy Road (120 feet);
      - (C) Reo Vista Estate (120 feet);
      - (D) Old Dock Road (120 feet);
      - (E) Closter Dock Road (120 feet).]
      - (A) **Lamont Observatory—Beginning at the prolongation of the southerly curb line of the entrance to Lamont Observatory and extending 120 feet southerly therefrom;**
      - (B) **Montammy Road—Beginning at the southerly curb line of Montammy Road extending 120 feet therefrom;**
      - (C) **Closter Dock Road—Beginning at the southerly curb line of Closter Dock Road and extending 135 feet northerly therefrom.**
    - (2) Near side bus stops:
      - [(A) Hillside Avenue (120 feet).]
      - (B) **Alpine Scout Camp—Beginning at the northerly curb line of the entrance to the Alpine Scout Camp and extending 140 feet northerly therefrom.]**
      - (A) **The Esplanade—Rio Vista Estate—Beginning at the northerly curb line of the Esplanade and extending 120 feet northerly therefrom;**
      - (B) **Timberline Drive—Beginning at the northerly curb line of Timberline Drive and extending 120 feet northerly therefrom;**
      - (C) **Glen Goin Drive—Beginning at the northerly curb line of Glen Goin Drive and extending 120 feet northerly therefrom;**

(D) Hillside Avenue—Beginning at the northerly curb line of Hillside Avenue and extending 120 feet northerly therefrom;

(3) Mid-block bus stops:

(A) Closter Dock Road—Beginning 714 feet north of the northerly curb line of Closter Dock Road and extending 135 feet northerly therefrom;

7.-8. (No change.)

(b) (No change.)

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID  
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Mid-block Crosswalk**

**Route N.J. 49 in Cumberland County**

**Proposed New Rule: N.J.A.C. 16:30-10.11**

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-34.

Proposal Number: PRN 1990-182.

Submit comments by May 16, 1990 to:

Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
1035 Parkway Avenue  
CN-600  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed new rule will establish a "mid-block crosswalk" along Route N.J. 49 in Fairfield Township, Cumberland County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and establishment of a designated area for pedestrians to safely cross the roadway at other than an area which is controlled and directed by a police officer or a traffic control device.

Based upon a request from the local government made in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a "mid-block crosswalk" along Route N.J. 49 in Fairfield Township, Cumberland County, was warranted.

The Department therefore proposes new rule N.J.A.C. 16:30-10.11, based upon request from the local government and the traffic investigation.

**Social Impact**

The proposed new rule will establish a "mid-block crosswalk" along Route N.J. 49 in Fairfield Township, Cumberland County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and establishment of a designated area for pedestrians to safely cross the roadway at other than an area which is controlled and directed by a police officer or a traffic control device. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the appropriate striping and signage along the roadway. Motorists who violate the rule will be assessed the appropriate fine.

**Regulatory Flexibility Statement**

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

Full text of the proposed new rule follows:

16:30-10.11 Route 49

(a) The certain parts of State highway Route N.J. 49 described in this subsection shall be designated as a mid-block crosswalk.

(1) In Fairfield Township, Cumberland County:

(a) From a point 2195 feet east of Gouldtown-Woodruff Road (Co. Rd. 553) to a point 10 feet easterly therefrom (approximate milepost 28.416).

**OTHER AGENCIES  
(b)**

**ELECTION LAW ENFORCEMENT COMMISSION**

**Notice of Public Hearing**

**Personal Interest Disclosure Statement**

**Proposed New Rule: N.J.A.C. 19:25-7.8**

**Proposed Amendment: N.J.A.C. 19:25-1.7**

Take notice that the Election Law Enforcement Commission shall hold a public hearing on proposed new rule N.J.A.C. 19:25-7.8 and the proposed amendment to N.J.A.C. 19:25-1.7, published in the February 5, 1990 New Jersey Register at 22 N.J.R. 331(a).

The public hearing will take place on the following date and at the following time and location:

Wednesday, April 18, 1990 at 9:30 A.M.  
Election Law Enforcement Commission  
National State Bank Building, 12th Floor  
28 West State Street  
Trenton, New Jersey

**AGRICULTURE  
(c)**

**DIVISION OF REGULATORY SERVICES**

**Grades and Standards**

**Fruit and Vegetable Fees and Charges**

**Proposed Amendments: N.J.A.C. 2:71-2.28, 2.29 and 2.31**

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

Authority: N.J.S.A. 4:10-6 and 4:10-13.

Proposal Number: PRN 1990-185.

Submit comments by May 16, 1990 to:

Robert C. Fringer, Director  
Division of Regulatory Services  
State Department of Agriculture  
CN 330  
Trenton, NJ 08625  
Telephone: 609-292-5575

The agency proposal follows:

**Summary**

The proposed amendments increase many of the fees charged for the inspection and grading of farm products in accordance with standards established and promulgated by the Department of Agriculture. The fees are increased as follows: the five-day week inspections for not more than one commodity from \$360.00 to \$380.00; the per hour overtime from \$13.50 to \$14.25, for the same; the five-day week inspections for more than one commodity from \$720.00 to \$760.00; the per hour overtime from \$27.00 to \$28.50 for the same. The hourly inspection rate charge from 8:00 A.M. through 5:00 P.M. is increased from \$17.00 to \$18.50. The hourly inspection rate charge from 6:00 P.M. through 7:00 A.M. is increased from \$25.50 to \$27.75. The trailer, carload, warehouse and storage minimum inspection fee is increased from \$18.00 to \$20.00. Container inspection, other than potatoes, is increased from \$0.11 to \$0.12 per container and the basic charge for potatoes per hundredweight is increased from \$0.12 to \$0.14. Delayed inspections are increased from \$13.00 to \$15.00 and the minimum charge is increased from \$6.50 to \$7.50.

Excess charges are altered as follows: the excess fruit and vegetable per package charge for seven-day week, one commodity, is reduced from 6,545 to 3,170 packages; for seven-day week, more than one commodity, from 6,545 to 6,335 packages.

A charge of \$10.00 per man-hour will be charged, in addition to the regular fee, on Saturdays, Sundays and legal State Holidays.

Inspection and grading services are provided to applicants pursuant to their request. Recipients of the services voluntarily agree to pay the fees for such charges prior to requesting the Department of Agriculture's inspection and classification.

#### Social Impact

The people most directly affected by these amendments will be the users of the voluntary inspection and grading services. These services help to maintain and promote agricultural commodities of the highest quality for the consumer. As a result of the grading service, perishable fresh fruits and vegetables, of uniform grade and standards, are more readily available for the consumer.

#### Economic Impact

Increases in salaries and overhead costs in the last several years necessitate the increased fees. The Department of Agriculture must maintain the inspection program on a "break-even basis" if it is to continue to offer this program to the users.

There will be a slight adverse economic impact on the users of these voluntary inspection and grading services. The increases are minimal in relation to the economic value of the graded product at present. These charges have not been increased in at least two years.

#### Regulatory Flexibility Analysis

The great majority of the participants in the voluntary inspection and grading program of the New Jersey Department of Agriculture, are small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. For such participants, the proposed amendments increase the program's produce inspection fees. Given the reasons for the fee increases, as set forth in the Economic Impact statement above, and the preponderance of small business participants in the program, no lesser fees or exemptions can be provided small businesses and still maintain the program's viability and efficiency.

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

#### 2:71-2.28 Charges for inspection or grading and certification services; written agreements for single commodity inspection

(a) Charges for inspection or grading and certification services of five or more consecutive days duration, performed pursuant to a written agreement between the New Jersey Department of Agriculture and the requestor of the services, shall be made according to the following schedule:

1. Basic schedule for all products:
  - i. A charge of [\$360.00] **\$380.00** per five day week (Monday through Friday) or 40 hours or less for each inspector;
  - ii. A charge of [\$13.50] **\$14.25** per hour, or portion thereof, for all hours worked over 40 in the five day week (Monday through Friday), or for all hours over eight hours per day;
  - iii. An additional charge of [\$13.50] **\$14.75** per hour, or portion thereof, for the actual hours worked by each inspector on legal State holidays occurring Monday through Friday;
  - iv. A charge of [\$13.50] **\$14.25** per hour, or portion thereof, for each inspector working on Saturday and/or Sunday. There will be a four hour minimum charge for each inspector working on Saturday and/or Sunday;
  - v. (No change.)
2. Charges for inspection or grading and certification of fruit and vegetables other than potatoes for fresh market:
  - i. A charge of \$0.06 will be made for all packages inspected or graded and certified in excess of [6,545] **3,170** packages during the seven day week (Saturday through Friday).
  3. Charges for inspection or grading and certification of potatoes for the fresh market:
    - i. A charge of \$0.03 per hundredweight for all hundredweights inspected or graded and certified in excess [3,600] **2,715** hundredweights during the seven day week (Saturday through Friday).

#### 2:71-2.29 Written agreements for multiple commodity inspection

(a) Charges for written agreements shall be made according to the following schedule:

- i. A charge of [\$720.00] **\$760.00** per five day week (Monday through Friday) or 40 hours or less for each inspector for the inspection and/or grading of more than one commodity;
- ii. A charge of [\$27.00] **\$28.50** per hour, or portion thereof, for all hours worked over 40 in the five day week (Monday through Friday), or for all hours over eight hours per day;
- iii. There will be at least a four hour minimum charge of [\$108.00] **\$114.00** assessed for each inspector assigned work on Saturday and/or Sunday;
- iv. A charge of [\$27.00] **\$28.50** per hour, or portion thereof, for the hours worked by each inspector on legal State holidays occurring Monday through Friday;
- v. There will be at least a four hour minimum charge of [\$108.00] **\$114.00** assessed for each inspector assigned work on legal State holidays occurring Monday through Friday;
- vi. A charge of \$0.06 will be made for all packages (other than potatoes) inspected or graded and certified in excess of [6,545] **6,335** packages during the seven day week (Saturday through Friday).

#### 2:71-2.30 Charges; oral agreements; trailer, car, warehouse and storage lots

(a) Charges for inspection or grading and certification services performed to an oral agreement between the New Jersey Department of Agriculture and the requestor, for all trailer, car, warehouse and storage lots, shall be made according to the schedule detailed below. A minimum of [\$18.00] **\$20.00** for inspection or grading and certification services shall be charged. However, if the conditions listed in N.J.A.C. 2:71-2.30 are met, the charges shall be calculated according to the hourly rate schedule set out in N.J.A.C. 2:71-2.31.

1. Basic charge schedule for products other than potatoes:
  - i. A charge of [\$0.11] **\$0.12** per container for all containers;
2. Basic charge schedule for potatoes:
  - i. A charge of [\$0.12] **\$0.14** per hundredweight;
  - ii. All other size containers and bulk loads shall be converted to hundredweight equivalents. Charges for these equivalents shall be at the rate of [\$0.12] **\$0.14** per hundredweight.
3. (No change.)
4. Delayed inspections: Delayed inspections are those inspections requiring more than two hours to complete (exclusive of travel time) due to delays of any kind not attributable to the inspector. Additional charges for delayed inspections shall be assessed according to the following schedule:
  - i. [\$13.00] **\$15.00** per hour charged in half hour increments.
  - ii. The minimum charge shall be [\$6.50] **\$7.50**.
5. Saturday, Sunday and legal State holiday inspections: For inspections performed on Saturdays, Sundays or legal State holidays a per man-hour rate will be charged in addition to the regular fee and shall be assessed according to the following schedule:
  - i. **\$10.00** per hour charged in half hour increments.
  - ii. The minimum charge shall be **\$5.00**.

#### 2:71-2.32 Hourly rate charges

(a) The hourly rate charges shall be made according to the following schedule:

1. A charge of [\$17.00] **\$18.50** per hour, or portion thereof, for regular work hours, 8:00 A.M. to 5:00 P.M. on regular workdays, Monday through Friday;
2. A charge of [\$25.50] **\$27.75** per hour, or portion thereof, for work started or completed between 6:00 P.M. and 7:00 A.M. on regular workdays, Monday through Friday;
3. A charge of [\$25.50] **\$27.75** per hour, or portion thereof, for work performed on Saturdays, Sundays, or legal State holidays at the request of the requestor.

(a)

**STATE AGRICULTURE DEVELOPMENT COMMITTEE**

**Acquisition of Development Easements**

**Proposed Amendments: N.J.A.C. 2:76-6.2, 6.5, 6.6, 6.9 through 6.12 and 6.15 through 6.17.**

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

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

Proposal Number: PRN 1990-184.

Submit comments by May 16, 1990 to:

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

The agency proposal follows:

**Summary**

The proposed amendments aid in the implementation of the farmland preservation program pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq. The proposed amendment to N.J.A.C. 2:76-6.2 includes several new definitions of commonly used terms in the subchapter. The proposed amendment to N.J.A.C. 2:76-6.9 requires the county and the landowner to arrive at a landowner asking price within 30 days of receipt of the State Agriculture Development Committee's (SADC) certified fair market value of the development easement. The proposed amendment to N.J.A.C. 2:76-6.10 requires within 60 days of the board's receipt of the certified fair market value of the easement that, as part of the existing county agriculture development board's (CADB) application to the SADC, the board must identify the landowner's asking price and percent of county and local cost share for each application. The most significant proposed amendment is to N.J.A.C. 2:76-6.11. The amendment clarifies that after an easement purchase application has been given preliminary approval with the eligibility for State cost share funds, funding priority is to be given those applications having a higher numerical value obtained by applying the statutory formula contained in N.J.S.A. 4:1C-31. Those applications which have the same formula index of greater than zero will be ranked according to the original ranking contained in N.J.A.C. 2:76-6.6. Those applications having an index of zero or the same formula index less than zero will be ranked according to the reduction in the SADC's percent cost share and, if necessary, the criteria contained in N.J.A.C. 2:76-6.6. Furthermore, the proposed amendment provides for the percentage of SADC cost share to be based on a sliding scale subject to the applicant's formula index. The minimum SADC cost share percent is 60 percent and the maximum is 80 percent. Regardless of the sliding scale, the SADC will fund a development easement purchase on the top ranked application in a county at an 80 percent cost share in those counties which have not received an 80 percent state cost share for development easement purchase. The SADC will not provide grants for ancillary costs. The proposed amendment also provides a procedure for adjusting grants based upon surveyed acreage.

Furthermore, the proposed amendment to N.J.A.C. 2:76-6.15 changes the deed restrictions utilized when development easements are purchased.

The definition of agricultural use has been slightly changed to comply with statutory language. In addition, an informational provision requiring the landowner to list the number of residences and agricultural labor housing existing at the time of conveyance on the premises has been added. Another provision makes it clear that agricultural labor housing erected after the purchase of the development easement may not be used as a residence by the seller or those who lawfully succeed to the property.

The amendment proposed for restriction #13 makes it clear that any subdivision of the farm must be for an agricultural purpose and result in agriculturally viable parcels. Another amendment to restriction #16 makes it clear that the easement is binding upon all owners of the restricted property. The amendment to #20 clarifies that the seller is conveying all non-agricultural development rights and development credits and that in the case that the development rights or credits are transferred pursuant to law, the county shall reimburse the SADC its cost share percentage.

**Social Impact**

The proposed amendments have a positive impact on New Jersey as they strengthen and implement the farmland preservation program estab-

lished pursuant to the Agriculture Retention and Development Act and the Right to Farm Act. The citizens of New Jersey benefit from a strengthened farmland preservation program through the preservation of farms and the enhancement of the agricultural industry in the state.

**Economic Impact**

The proposed amended rules have a favorable economic impact on the State's farmland preservation program. By increasing its percentage cost share to the county based upon the Seller's reduction of its asking price, the SADC is encouraging counties (ultimate holders of the easement) to aggressively negotiate with the landowners thereby saving both State and county funds. In addition, the fact that the SADC's decision to purchase development easements is dependent upon the landowner's asking price relative to fair market value should result in similar savings of public funds. Since the program is voluntary, the proposed rules will not result in the landowner losing equity. The strengthening of the current rules will have a positive impact upon the citizens of New Jersey and on the state's agricultural industry in that it encourages the continuation and enhancement of agriculture.

**Regulatory Flexibility Analysis**

The majority of the land potentially subject to the farmland preservation program is owned by small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments do not impose reporting or recordkeeping requirements on such farmland owners. The 30 day compliance requirement, to agree on an asking price, is based on a statutory change pursuant to P.L.1989 c.310 and therefore a differing standard of compliance is not an option in this rulemaking. A farmland owner's participation in the easement purchase program is voluntary.

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

2:76-6.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

...  
**"Ancillary costs"** means costs for appraisals, surveys, title searches and insurance, local governmental expenses, administrative costs, real property taxes, and development easement costs in excess of the fair market value of the development easement certified by the committee.  
 ...

**"Formula index"** means the value obtained by application of the formula contained in N.J.S.A. 4:1C-31b(1).  
 ...

**"Landowner asking price"** means the price of the development easement agreed upon by the landowner and the board determined at the time of the board's final review.  
 ...

**"Non-agricultural development value—agricultural value"** means the fair market value of the development easement as certified by the committee.  
 ...

2:76-6.5 Preliminary board review

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

(c) The board shall review the application pursuant to [N.J.A.C. 2:76-6.16(a)] **N.J.A.C. 2:76-6.17(a)** and determine the number of residual dwelling site opportunities to be allocated to the premises.

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

2:76-6.6 Preliminary committee review

(a) Upon receipt of an application from the board, the committee shall review and evaluate the easement purchase application and respective project area [in compliance with] **pursuant to N.J.A.C. 2:76-6.16.**

(b) (No change.)

(c) The committee may remand the application to the board if the number of allocated residual dwelling site opportunities appears excessive in view of factors listed in [N.J.A.C. 2:76-6.16(a)i through iii] **N.J.A.C. 2:76-6.17(a)i through iii.**

2:76-6.9 Final board review

(a) [The board shall inform the landowner of the certified fair market value of the development easement and shall proceed to negotiate a purchase price of the development easement with the

landowner. In no case shall the committee make a grant to the board for more than 80 percent of the certified fair market value of the development easement.] **Within 30 days of the board's receipt of the certified fair market value of the development easement, the board and landowner shall arrive at a landowner asking price for the development easement.**

1. The purchase price of the development easement shall be adjusted according to the acceptance or rejection of any residual dwelling site opportunities permitted pursuant to [N.J.A.C. 2:76-6.16] N.J.A.C. 2:76-6.17.

(b) The board shall review the easement purchase application, respective project area [and the negotiated offer to], **landowner asking price, and the formula contained in N.J.S.A. 4:1C-31b(1)** to determine the suitability of the land for development easement purchase on the basis of the following factors:

- 1. and 2. (No change.)
- (c) and (d) (No change.)

2:76-6.10 Board application to the committee

(a) **Within 60 days of the board's receipt of the certified fair market value of the development easement, the [The] board shall submit the following information to the committee:**

- 1. Priority ranking of applications;
- 2. [Negotiated development easement value; and] **Landowner asking price;**
- 3. Justification for arriving at its decision[.]; and
- 4. **Percent of county and local cost share for each application.**

2:76-6.11 Final committee review

(a) [The committee shall review the easement purchase application, respective project area and the negotiated development easement value to determine the suitability of the land for development easement purchase in accordance with N.J.A.C. 2:76-6.16.] **Using the original ranking made pursuant to N.J.A.C. 2:76-6.6 as a base, the committee shall re-rank the applications which have received preliminary approval and are eligible for state cost share funds according to the formula contained in N.J.S.A. 4:1C-31b(1) and any percentage reduction of the committee's percent cost share per application.**

1. **Regardless of original rankings, funding priority will be given to those applications which have received preliminary approval and are eligible for State cost share funds with higher numerical values obtained by application of the following statutory formula:**

$$\frac{\text{nonagricultural development value} - \text{agricultural value}}{\text{nonagricultural value} - \text{agricultural value}} - \frac{\text{landowner asking price}}{\text{formula index}} = \text{formula index}$$

i. **Applications having the same formula index of greater than (0) will be ranked according to the original ranking obtained in N.J.A.C. 2:76-6.6.**

ii. **Applications having a formula index of (0) will be ranked according to the reduction in the committee's percent cost share. Applications with identical committee cost share reductions will be prioritized according to the original ranking obtained in N.J.A.C. 2:76-6.6.**

iii. **Applications having the same formula index less than (0) will be ranked according to the reduction in the committee's percent cost share. Identical committee cost share reductions will be prioritized according to the original ranking obtained in N.J.A.C. 2:76-6.6. A reduction in the committee's percent cost share on an application shall be based on the fair market value of the development easement certified by the committee.**

[(b) The committee shall rank and approve or disapprove an application(s) and state the reasons for arriving at the decision.]

[(c)](b) **The committee [shall] shall not authorize funding for [no] more than 80 percent of the cost of the development easement [on applications receiving a priority ranking].**

1. **The percent committee cost share shall be based upon the applicant's formula index as follows:**

formula index	percent committee cost share
Less than 0.10	60
0.10 up to less than 0.20	65
0.20 up to less than 0.30	70
0.30 up to less than 0.40	75
0.40 or greater	80

2. **Notwithstanding (b)1 above, the committee will fund a development easement purchase on the top ranked application in a county at an 80 percent cost share in those counties which have not received an 80 percent committee cost share for development easement purchase.**

3. **The committee will not provide any cost share funds for ancillary costs for development easement purchases.**

(c) **The committee will fund, on a per acre base, a development easement purchase at the respective cost share percentage as determined in (b)1 and 2 above, based on the acreage known at the time of final committee approval; however, any increase in cost of a development easement resulting from an increase in acreage as determined by the final survey will not be paid for by the committee. The committee shall adjust its share on a per acre basis if there is a reduction in the cost of a development easement resulting decrease in surveyed acreage.**

2:76-6.12 Landowner decision

(a) [Upon approval and authorization of funding by the board and the committee] **Within 30 days of the board's receipt of the committee's final approval, the board shall present to the landowner [an] a written offer to purchase the development easement. A binding offer shall be contingent upon compliance with the provisions stated in N.J.A.C. 2:76-6.13.**

(b) **The landowner shall accept or reject the offer in writing within 30 days of receipt thereof. Any offer not accepted within that time shall be deemed rejected.**

2:76-6.15 Deed restrictions

(a) The following statement shall be attached to and recorded with the deed of the land and shall run with the land: "Grantor promises that the Premises shall be owned, used and conveyed subject to:

"1. (No change.)

"2. The Premises shall be retained for agricultural use and production in compliance with N.J.S.A. 4:1C-11 et seq., P.L. 1983, c.32, and all other rules promulgated by the State Agriculture Development Committee, (hereinafter [committee] **Committee**). Agricultural use shall mean the use of land for common farmsite activities including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management, and grazing [and conservation].

"3.-5. (No change.)

"6. Grantee and its agents shall be permitted access to, and to enter upon, the Premises at all reasonable times, but solely for the purpose of inspection in order to enforce and assure compliance with the terms and conditions of this easement. Grantee agrees to give Grantor at least 24 hours advance notice of its intention to enter the Premises, and further, to limit such times of entry to the daylight hours on regular business days of the week. [The interior of buildings shall not be inspected.]

"7.-9. (No change.)

"10. Nothing in this easement shall be deemed to restrict the right of Grantor to maintain all roads and trails existing upon the Premises as of the date of this easement. Grantor shall be permitted to construct, improve or reconstruct any roadway necessary to service crops, bogs, **agricultural buildings**, or reservoirs as may be necessary.

"11. **At the time of this conveyance, Grantor has (\_\_\_\_\_) existing single family residential building(s) on the Premises and (\_\_\_\_\_) residential buildings used for agricultural labor purposes. Grantor may use, maintain, and improve existing buildings on the Premises for agricultural, residential and recreational uses subject to the following conditions:**

i.-iii. (No change.)

"12. Grantor may construct any new buildings for agricultural purposes. The construction of any new building for residential use, regardless of its purpose, shall be prohibited except as follows:

i. To provide structures for housing of agricultural labor employed on the Premises but only with the approval of the Grantee and the Committee[; and]. **If Grantee and the Committee grant approval for the construction of agricultural labor housing such housing shall not be used as a residence for Grantor; and**

ii. (No change.)

"13. The land and its buildings which are affected may be sold collectively or individually for continued agricultural uses defined in Section 2 of this easement. However, no subdivision of the land shall be permitted without the joint approval in writing of the Grantee and the Committee. **In order to give approval, The Grantee and Committee must find that the subdivision shall be for an agricultural purpose and result in agriculturally viable parcels.** [The subdivision shall be consistent with agricultural management practices recommended by the Committee.] Subdivision means any division of the Premises, for any purpose, subsequent to the effective date of this easement.

"14. and 15. (No change.)

"16. [This easement shall be binding upon the Grantor and upon the Grantee.] **This easement is binding upon the Grantor, his heirs, executors, administrators, personal or legal representatives, successors and assigns and the Grantee; it shall be construed as an easement running with the land and shall be binding upon any person to whom title to the premises is transferred as well as upon the heirs, executors, administrators, personal or legal representatives, successors, and assigns of all such persons.**

"17.-18. (No change.)

"19. Wherever in this easement any party shall be designated or referred to by name or general reference, such designation shall have the same effect as if the words 'heirs, executors, administrator, personal or legal representatives, successors and assigns' have been inserted after each and every designation.[""]

"20. **Grantor, his heirs, executors, administrators, personal or legal representatives, successors and assigns further transfers and conveys to Grantee all of the non-agricultural development rights and development credits appurtenant to the lands and premises described herein. Nothing contained herein shall preclude the conveyance or retention of said rights by the Grantee as may be permitted by the laws of the State of New Jersey in the future. In the event that the law permits the conveyance of said development rights, Grantee agrees to reimburse the Committee ( ) percent of the value of the development rights as determined at the time of the subsequent conveyance."**

(b) and (c) (No change.)

(d) The deed restriction contained in [N.J.A.C. 2:76-6.16(h)] N.J.A.C. 2:76-6.17(h) shall be incorporated in the deed of easement when there has been an award of one or more residual dwelling site opportunities.

2:76-6.16 Criteria for evaluating development easement applications

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

[(h) Factors which determine the relative best buy criterion (weights) is as follows:

1. Priority will be given to offers with higher numerical values obtained by application of the following formula:

$$\frac{\text{nonagricultural development value} - \text{agricultural value}}{\text{nonagricultural development value} - \text{agricultural value} - \text{landowner asking price}}$$

2. Factors to be considered are as follows:

i. The certified and/or negotiated value of the development easement determined for an individual application at the final review state.]

[(i)(h) Special considerations are as follows:

1. Factors of positive special consideration by the committee are as follows:

[i. A contribution to reduce the committee's percent cost share of the negotiated development easement value;]

[ii].i. [The first application(s) in the county to receive the committee's preliminary approval which ultimately results in the purchase of the development easement(s)] **The first viable application in a county; and**

[iii].ii. Geographic distribution among counties.

2. and 3. (No change.)

2:76-6.17 Residual dwelling site opportunity

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

(h) The following restriction shall be incorporated in the easement where there has been an award of one or more residual dwelling site opportunities:

( ) residual dwelling site opportunities have been allocated to the Premises pursuant to the provisions of N.J.A.C. [2:76-6.16] **2:76-6.17.** Upon the intent of the Grantor to exercise a residual dwelling site opportunity, the Grantee shall be notified of the intent to exercise a residual dwelling site opportunity and the proposed location of the residual dwelling site. The Grantee may review the proposed location and submit comments to the Grantor and the municipal planning review body regarding the impact of the proposed location of the residual dwelling site on the farm operation. Approval of the location of the residual dwelling site shall be made by the municipal planning review body and meet the following standards established by the Committee:

1.-3. (No change.)

Upon approval of the location of the residual dwelling site by the municipal planning review body, the landowner shall:

1. (No change.)

2. Submit a copy of the legal metes and bounds description to the [Grantor] **Grantee** and the Committee for general recordkeeping purposes.

In the event a subdivision of the premises occurs in compliance with deed restriction No. 13 above, any unexercised residual dwelling site opportunities shall be reallocated to the subdivided tracts as determined by the Grantor.

For the purpose of this easement, a "residual dwelling site" means a contiguous area, two acres in size and identified by a legal metes and bounds description, within which a residential unit and other appurtenant structures may be constructed.

For the purpose of this easement, "residential unit" means the residential building located within the residual dwelling site to be used for single family residential housing and its appurtenant uses. The construction and use of the unit shall be for agricultural purposes.

or

**No residual dwelling site opportunities have been allocated pursuant to the provisions of N.J.A.C. 2:76-6.17. No new residential buildings are permitted on the Premises except as provided in this Deed of Easement.**

## EDUCATION (a)

### STATE BOARD OF EDUCATION

#### Business Services

#### Proposed Readoption with Amendments: N.J.A.C. 6:20

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

Authority: N.J.S.A. 18A:1-1, 18A:4-14, 18A:4-14.1, 18A:4-15, 18A:7A-19, 18A:7A-25, 18A:7A-26, 18A:7B-12, 18A:17-45, 18A:18A-4, 18A:18A-5, 18A:18A-7, 18A:18A-27, 18A:18A-37, 18A:18A-40, 18A:18A-42, 18A:19-13, 18A:22-8, 18A:29-3, 18A:29-5, 18A:29-5.1, 18A:29-5.3, 18A:29-5.6, 18A:29-5.12, 18A:33-3, 18A:38-5, 18A:38-19, 18A:38-25, 18A:44-2, 18A:46-6.1, 18A:46-21, 18A:58-33.39, 18A:58-37.1 et seq., 18A:58-68, 18A:58-72, 18A:58-74, 18A:58-75, 18A:58-76, 40A:11-11, 52:14-15.9(e), 52:14B-4(c), Chapter 154, Laws of 1987; and Executive Order No. 34 (1976).

Proposal Number: PRN 1990-199.

Submit written comments by May 16, 1990 to:  
Irene Nigro, Rules Analyst  
New Jersey Department of Education  
225 West State Street, CN 500  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 6:20, Business Services is due to expire on August 9, 1990.

The State Board of Education is proposing to readopt these rules with amendments. Subchapter 4 governing tuition for private schools for the handicapped is presented without amendments. However, the State Board of Education has established a subcommittee to review the Subchapter 4 and amendments may be proposed in the future.

The purpose of this chapter is to provide rules for attendance and pupil accounting; bookkeeping and accounting in local school districts; double entry bookkeeping and generally accepted accounting principles (GAAP) accounting in local school districts; tuition in public schools; tuition for private schools for the handicapped; state aid; the purchase and loan of textbooks; the qualification, debarment, suspension and disqualification of persons concerning contract administration; and for public school contracts. Amendments are proposed for several subchapters to clarify and strengthen these rules.

A review of the subchapters follows:

#### N.J.A.C. 6:20-1 Attendance and Pupil Accounting

This subchapter was adopted in 1955 and readopted in 1969. It establishes the requirements for maintaining pupil attendance records within school districts. Detailed instructions enable school districts to calculate school enrollment and school attendance. These records provide essential data regarding the implementation of school programs.

Amendments are proposed to clarify existing requirements, including requirements to set school age limits for pre-school handicapped programs (over three and less than five years) and a definition of the average daily attendance for school districts.

#### N.J.A.C. 6:20-2 Bookkeeping and Accounting in Local School Districts

This subchapter provides the general requirements for a "uniform and simple system of bookkeeping" for school districts pursuant to N.J.S.A. 18A:4-14. The subchapter will remain in effect until implementation on July 1, 1993 of the double entry-GAAP accounting rules adopted pursuant to P.L. 1987, c.165 and P.L. 1989, c.266 which are contained in N.J.A.C. 6:20-2A.

N.J.A.C. 6:20-2.7 and 2.8 have been revised to eliminate the approval of "mechanical or electronic data processing bookkeeping systems" by the Commissioner. The approval process was implemented over 10 years ago when districts began utilizing computers in lieu of the State prescribed bookkeeping forms. At that time, the use of computers was in its infancy in New Jersey's school districts and the process was implemented to monitor the conversion to computers. Because of the standardization of governmental fund accounting and payroll programs and the Single Audit Act's (P.L. 98-502) requirement of an independent annual audit of a school district's financial internal control systems, the approval of computerized bookkeeping systems no longer serves a valid governmental purpose.

N.J.A.C. 6:20-2.13 has been revised to establish an effective "early warning system" to help identify potential overexpenditures of funds (deficits) by requiring the board to take an active role on a monthly basis to either assure compliance or identify noncompliance and report such findings to the county superintendent. The proposed new rules require certification by the board secretary that no line item deficits exist, and certification by the board of education that no major account or fund deficit exists and that sufficient funds are available to meet the district's financial obligations for the remainder of the fiscal year. In the event such certifications cannot be issued, the proposed new rules require the board to resolve line item deficits and to notify the county superintendent immediately in the event of an anticipated deficit in a major account or fund. The process must occur monthly and the board is required to duly note either the certifications or the corrective action taken in the minutes each month.

#### N.J.A.C. 6:20-2A Double Entry Bookkeeping and GAAP Accounting in Local School Districts

This subchapter provides the general requirements for school districts for a "uniform system of double entry bookkeeping consistent with the generally accepted accounting principles (GAAP) established by the Governmental Accounting Standards Board" pursuant to N.J.S.A. 18A:4-14 as amended by P.L. 1987, c.165 and P.L. 1989, c.266. The law has an effective date of July 1, 1993.

N.J.A.C. 6:20-2A.5 has been amended to eliminate the Commissioner's prescribed "list of articles to be regarded as supplies and equipment for accounting purposes." In lieu of this list, a set of uniform criteria for distinguishing supply and equipment items which is consistent with GAAP and Financial Accounting for Local and State School Systems (presently referred to as Handbook 2R2) is to be adopted by reference. The development and maintenance of supply and equipment lists is impractical because there are thousands of materials and devices used by school districts and classifications continually change due to changes in price or technology.

N.J.A.C. 6:20-2A.6 and 2A.11 have been revised, respectively, to eliminate the Commissioner's approval of computerized bookkeeping systems and to establish an effective "early warning system" to help identify potential overexpenditures of funds (deficits). A more elaborate explanation for these revisions is contained in the summary for N.J.A.C. 6:20-2.

#### N.J.A.C. 6:20-3 Tuition Public Schools

This subchapter was originally adopted in June, 1955. It was subsequently amended in December, 1970, September, 1974, April and May, 1980, July, 1982, May, 1984 and April, 1988. The subchapter has proved to be effective and fair for both sending and receiving district boards of education. The rules provide a uniform method for determining tuition rates and for administering tuition contracts, thereby reducing conflict between district boards of education. The subchapter supports the intent of the tuition system for public schools and gives full force and effect to existing statutes concerning tuition in public schools.

N.J.A.C. 6:20-3.1(c)7, relating to fixed charges, is being amended to require that eligible rental charges on a lease purchase site or school building be prorated based upon the ratio of square feet of floor space used by each program.

N.J.A.C. 6:20-3.1(c)12, relating to the building use charge, is being amended to clarify existing policy.

#### N.J.A.C. 6:20-4 Tuition for Private Schools for the Handicapped

This subchapter, which provides the general requirements and procedures for tuition in private schools for the handicapped pursuant to N.J.S.A. 18A:46-21, is proposed for readoption without amendment. Revised language will be developed based upon the recommendations of the State Board of Education subcommittee appointed for this purpose on February 7, 1990.

#### N.J.A.C. 6:20-5 State Aid

All provisions of this subchapter were originally filed and became effective prior to December, 1976, with amendments in October, 1980. The subchapter was readopted with amendments in November, 1984.

The sections in this subchapter set forth the rules which determine eligibility for various State aid programs.

N.J.A.C. 6:20-5.1 prescribes the information required from district boards of education on the State aid application to employee public school law enforcement officers. This information enables the Department of Education to determine whether a district board of education is eligible for public school law enforcement officer State aid and to determine the amount of aid that will be granted.

A proposed amendment to this rule clarifies the State aid and public school law officer employment procedures and does not change the intent of the program.

N.J.A.C. 6:20-5.2 establishes standard reporting procedures for construction progress, fiscal control, accounting and auditing of the funds district boards of education receive under the Additional State School Building Aid Act, P.L. 1978, c.74. The rule has been effective in insuring the proper use of funds provided by this act, by requiring that funds are expended only to meet the required payments for construction or acquisition of the educational facilities financed by the issuance of bonds under this act. It also specifies that any funds remaining after the completion of the project are returned to the State Treasurer. No changes are proposed for this section.

N.J.A.C. 6:20-5.3 provides the basis for determining the district of residence for children in State facilities or who have been placed by State agencies in group homes, private schools, or out-of-State facilities. This rule permits the Division of Finance and the Departments of Corrections and Human Services to attempt to resolve disputes which arise as a result of an assignment of a district under the criteria established by the State Facilities Act of 1979, N.J.S.A. 18A:7B-1 et seq., at N.J.S.A. 18A:7B-12.

Language defining the "district of residence" for a homeless child has been added to this section pursuant to P.L. 1989, c.290 (N.J.S.A. 18A:7B-12).

N.J.A.C. 6:20-5.4 provides direction to the Departments of Corrections and Human Services concerning the submission of pupil addresses in specific situations. No changes are proposed for this rule.

N.J.A.C. 6:20-5.5 contains the standards for providing State aid to district boards of education which have a current or potential health hazard because of asbestos materials pursuant to the State School Aid Act for Asbestos, N.J.S.A. 18A:58-68 et seq. The rule ensures that all district boards of education which are eligible for reimbursement will receive State aid funds in an equitable manner for necessary asbestos work.

The amendment proposed for this section is intended to clarify how adjustments to State aid reimbursements for asbestos removal can be made and requires that the district board of education complete the asbestos removal or encapsulation within two years from the date the entitlement is approved. The purpose of this amendment is to support a fair distribution of available funds and the prompt completion of the asbestos remediation work.

N.J.A.C. 6:20-5.6 establishes \$18,500 as the lowest salary on a teaching staff member's salary guide, specifies the treatment for teaching staff members returning from various types of leave, and establishes the basis for the proration of State aid. The rule clarifies certain items relating to the calculation of the amount of State aid which a district board of education is entitled to receive and establishes the bookkeeping requirements for the receipt of the State aid.

The amendment proposed for this section deletes references to the 1984-85 and 1985-86 school years. As a result, several subsections and subparts have been renumbered.

N.J.A.C. 6:20-5.7 establishes procedures for the State aid program for the removal and encapsulation of asbestos in nonpublic schools. The program was first funded through the Appropriations Act for Fiscal Year 1988, P.L. 1987, c.154. Appropriations have continued in succeeding years. The rule identifies which nonpublic schools are eligible for State aid reimbursement, defines key terms which impact on the priority for reimbursement, identifies reimbursable projects and provides for appropriate accounting procedures and reports. The purpose of the rule is to promote the public health and welfare within nonpublic schools, as N.J.A.C. 6:20-5.6 does for public schools.

An amendment is proposed in N.J.A.C. 6:20-5.7(a) to remove references to activity prior to July 1, 1987. New subsection N.J.A.C. 6:20-5.7(m) requires that all asbestos removal and encapsulation projects be completed within two years from the date an entitlement is approved.

#### N.J.A.C. 6:20-6 Purchase and Loan of Textbooks

This subchapter was first adopted in August, 1974, and readopted in March, 1985, with amendments. It implements a program mandated in N.J.S.A. 18A:58-38.1 et seq. The subchapter provides for the purchase of textbooks by district boards of education for subsequent loan to students in nonpublic schools. Specified are procedures for requesting, selecting, purchasing and fiscal accounting of these textbooks.

Several amendments to the subchapter are proposed to clarify terms and accounting procedures.

#### N.J.A.C. 6:20-7 Qualification, Debarment, Suspension and Disqualification of Person(s) Concerning Contract Administration

This subchapter was adopted December, 1979, and readopted November, 1984. With the enactment of the Public Schools Contracts Law in 1977, the Department acquired the authority in N.J.S.A. 18A:18A-27 to delegate the qualification of prospective bidders upon contracts for public work to the Department of Treasury or some other State agency. This subchapter provides that the qualification of bidders in public work contracts exceeding \$20,000 will be governed by rules adopted by the Department of Treasury. This process has proven to be cost-effective. No changes are proposed for this subchapter.

#### N.J.A.C. 6:20-8 Public School Contracts

This subchapter was adopted in February, 1980, and readopted with amendments in March, 1985. The purpose of this subchapter is to restrict the awarding of contracts for extraordinary, unspecified services; provide standards for leases of equipment and for service agreements beyond the fiscal year; provide standards for change orders and open-end contracts; define the types of bonds permitted; establish a filing procedure for contracts due to an emergency situation; provide standards for contracts for behind-the-wheel driver education; and establish the requirements for cooperative pricing systems. The purpose of these rules is to insure more competitiveness and visibility in the awarding of contracts.

Amendments are proposed in N.J.A.C. 6:20-8.1, 6:20-8.2, and 6:20-8.3 to clarify the existing rules.

#### Social Impact

The readoption of N.J.A.C. 6:20, Business Services, with the proposed amendments, is intended to continue and improve the existing rules for certain essential activities which support the educational process.

These rules help protect the public interest by assuring that educational support activities will be conducted both in accordance with law and in a manner which benefits students and the general public. These rules also promote sound administrative practices and provide for the proper expenditure of public funds. The readoption of this chapter, with the proposed amendments, will have no significant new social impact since the rules and amendments simply implement or clarify existing requirements.

The real impact of the readoption of this chapter can be measured by the confusion and chaos which would result if district boards of education were able to conduct certain essential activities which support the educational process in an inconsistent manner without sound administrative procedures and practices.

Experience has shown that these rules resolve problems, have a positive impact on educational programs and on students and benefit taxpayers.

#### Economic Impact

In the past, these rules have provided an orderly and efficient method for the conduct of essential district board of education support activities. Their readoption will continue this process and create an overall positive economic impact in terms of the degree of protection which the rules provide for the proper expenditure of public funds. Some short-term negative economic impact will be felt due to the introduction of the double-entry-GAAP accounting system in all district boards of education by July 1, 1993. There may be short-term costs for district boards of education which may have to purchase computers and the available software or hire additional personnel to handle the GAAP system. However, the new accounting system will help safeguard district boards of education assets against waste and mismanagement and will also provide valuable information for local, State and Federal policymakers.

Since subchapter 4 is proposed for readoption without change, there is no new negative economic impact upon private schools for the handicapped. Current rules require the private schools to hire bookkeeping personnel and an independent licensed public school accountant to prepare a year-end audit. The costs of such services may be included in the tuition rate charged district boards of education and therefore will not impose a burden on the regulated private schools.

#### Regulatory Flexibility Statement

The readoption of N.J.A.C. 6:20 with the proposed amendments will impose no reporting, recording or compliance requirements on small business, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., except for private schools for the handicapped. N.J.A.C. 6:20-4 will impose reporting, recording and compliance requirements on approximately 120 private schools for the handicapped which include both not-for-profit and profit making entities.

Since the readoption of N.J.A.C. 6:20-4 is proposed without change, the subchapter will not require any additional reporting, recording and compliance requirements beyond those which were already in effect prior to readoption. As in prior years, private schools for the handicapped will be required to maintain financial records on an accrual basis of accounting. Those records shall include, but not be limited to: (1) a cash receipts journal; (2) cash disbursements; (3) a general ledger; (4) a tuition ledger; (5) a payroll journal and (6) a fixed asset inventory. The rules also require that a private school file a year-end audit report which shall be prepared by a licensed public school accountant. The bookkeeping and year-end audit requirements necessitate the hiring of bookkeeping personnel and an independent licensed public school accountant. The costs of such

services may be included in the tuition rate charged local school districts and therefore will not impose a financial burden on the regulated schools.

Except for N.J.A.C. 6:20-4, all requirements of these rules and amendments impact solely upon New Jersey public school districts and upon schools operated by the New Jersey Department of Education.

**Full text** of the re Adoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:20.

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

#### 6:20-1.1 School register

(a) The [commissioner] **Commissioner** shall prepare and distribute annually a school register which shall be known as the New Jersey School Register, for recording pupil attendance in all public schools of the State operated by **district** boards of education, except adult **high** schools.

(b) (No change.)

(c) [In addition to school registers used in regular classes, separate] **Separate** school registers shall be kept for pupils attending [regular evening schools, evening vocational schools, schools or classes for the physically handicapped, schools or classes for the mentally handicapped,] **a.m. kindergarten, p.m. kindergarten, full-day kindergarten, grades 1 through 6, grades 7 and 8, grades 9 through 12, each pre-school handicapped class, each handicapped class, shared-time classes for regular pupils, shared-time classes for handicapped pupils, full-time bilingual education programs and vocational day programs,** and summer schools operated by **district** boards of education.

(d) The attendance record of all [mentally retarded or physically handicapped] pupils furnished individual instruction or training [at home or in school] shall be recorded in [one or more separate school registers kept, insofar as practicable, according to the regulations herein provided. These registers shall serve as] a separate official record of [the individual] **home** instruction provided by the [local school] **district board of education**. Pupils on roll in [these registers] **home instruction** shall not be regarded as enrolled for purposes of [State aid based upon] average daily enrollment and [the statistical data accumulated therein shall not be included in reports of class instruction] **average daily attendance**.

#### 6:20-1.2 School enrollment

(a) The enrollment in a class, a school or a school district shall be the total number of original entries in any such unit during a school year. The total number of original entries in all the classes and schools of a school district shall constitute the school enrollment for that district **board of education** during any school year.

(b) No pupil attending a [public] school operated by a **district** board of education shall be enrolled in more than one school register in any school district during a school year. [Such] **All** pupils shall be enrolled as of the first day of attendance for that year.

(c) No pupil shall be enrolled in a school register until [he] **the pupil** has reached the following legal school age:

1. Kindergarten—over four years and less than six years;
2. [Primary] **Day** school—over five years;
3. [Evening school—over 12 years] **Pre-school handicapped—over three years and less than five years.**

(d) (No change.)

(e) The average daily enrollment in a school district for a school year shall be the sum of the days present and absent of all enrolled pupils when [the school was] **schools were** in session during the year, divided by the number of days [school was] **schools were** actually in session. The average daily enrollment for the classes or schools of a district having varying lengths of terms shall be the sum of the average daily enrollments obtained for the individual classes or schools.

(f) **The average daily attendance in a school district for a school year shall be the sum of the days present of all enrolled pupils when schools were in session during the year, divided by the number of days schools were actually in session. The average daily attendance for the classes or schools of a district having varying lengths of terms shall be the sum of the average daily attendance obtained for the individual classes or schools.**

#### 6:20-1.3 School attendance

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

(d) A day of attendance shall be one in which a pupil is present for the full day under the guidance and direction of a teacher [or teachers] while school is in session. Whenever overcrowded conditions make it necessary to hold two separate sessions with a different group of pupils in each session a pupil attending for all of either session shall be regarded as having attended for the full day. An excused absence for any reason shall not be counted as a day of attendance in the school register.

(e) (No change.)

[(f)] An evening school session shall be considered the equivalent of a half-day class in the regular day school for students attending a minimum of two or more hours.]

[(g)](f) (No change in text.)

[(h)](g) No pupil shall be recorded as present unless the school is in session and the pupil or pupils so recorded are under the guidance and direction of a teacher [or teachers] in the teaching process.

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

[(j)](i) A pupil shall be recorded as either present, absent, or excused for religious observance, every day the school is in session after [he] **the pupil** enters until the date [he] **the pupil** is transferred to another school, transferred to [a register for] **an individual home instruction [and training] record,** or officially leaves the school system.

[(k)](j) (No change in text.)

[(l)](k) The mere presence of a pupil at roll call shall not be regarded as sufficient attendance for compliance with these rules. In a [two-session] school **which is in session during both the forenoon and the afternoon,** a pupil shall be present at least one hour during [any school session] **both the forenoon and the afternoon** in order to be recorded as present for [that session] **the full day**. In a [one-day session] school **which is in session during either the forenoon or the afternoon,** a pupil shall be present at least two hours [during any school] **in the session** in order to be recorded as present for [that session] **the full day**. [This rule shall be construed to apply to the occasional individual pupil only and not to a class as a whole].

(m) In one-session schools the attendance of all pupils on roll in a school register shall be recorded for one session only. In such instances the time and length of the session shall be a matter of record in the school register.

(n) Whenever any school district initiates a program for kindergarten classes where it is deemed advisable that the kindergarten children attend less than a 2½ hour session, such children shall be considered present in the school register under the following conditions:

1. The shortened sessions shall not be extended beyond the first three days of school.
2. Such shortened sessions shall consist of not less than one hour of such actual attendance.
3. The provision of such shortened sessions shall be made upon the recommendation of the superintendent of schools or the county superintendent of schools in school districts where there is no superintendent; shall be approved by the board of education, and shall be incorporated in the school calendar year for any year in which such shortened sessions are approved.]

#### 6:20-2.1 Prescribed system of single entry bookkeeping

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

(d) **This subchapter shall expire on July 1, 1993 upon implementation of the double entry, GAAP accounting rules contained in N.J.A.C. 6:20-2A pursuant to N.J.S.A. 18A:4-14.1.**

#### 6:20-2.5 Accounting directions

The Commissioner shall prepare directions to be used by school officials in keeping the bookkeeping and accounting system in this subchapter and shall from time to time prepare, publish and distribute handbooks, materials or [circulars] **bulletins** for the guidance of school officials.

## 6:20-2.7 Bookkeeping and accounting forms

The Commissioner shall prepare and distribute the necessary forms for the bookkeeping and accounting system except to those district boards of education which [have received approval for] utilize mechanical or electronic data processing bookkeeping systems.

## 6:20-2.8 Mechanical bookkeeping systems

[(a) All mechanical or electronic data processing bookkeeping systems to be used by district boards of education shall be approved by the Commissioner prior to usage.]

[(b)] District boards of education which contract for electronic data processing bookkeeping services shall annually have an audit prepared or obtain a copy of an audit of the internal controls of the service company or agency as prescribed by Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants and maintain a copy of such audit on file.

## 6:20-2.13 Overexpenditure of funds

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

**(d) A district board of education shall obtain a certification from the district board of education secretary each month that no line item account or program category account has been overexpended in violation of (a) above. If a violation has occurred, the district board of education shall by resolution either transfer amounts among line items and/or from the free balance or direct the district board of education secretary or the chief school administrator, as appropriate, to transfer amounts among line items and/or from the free balance to eliminate the line item account deficit(s). If the latter option is selected, the appropriate official shall provide a detailed report of the amounts transferred into and out of the affected line item account(s) or free balance for the board's ratification at the next regularly scheduled meeting. As applicable, the secretary's certification or a detailed account of all transfers and the board's ratification, when this option is selected, shall be reflected in the minutes of the board. All transfers shall be subject to the restrictions contained in N.J.S.A. 18A:22-8.1 and 18A:22-8.2.**

**(e) A district board of education, after review of the secretary's monthly financial report (appropriations section) and upon consultation with the appropriate district officials, shall certify in the minutes of the board each month that no major account or fund has been overexpended in violation of (b) above and that sufficient funds are available to meet the district's financial obligations for the remainder of the fiscal year. If the board is unable to make such a certification, the board shall direct the chief school administrator to initiate the steps outlined in (b) above and such directive shall be reflected in the minutes of the board.**

Recodify existing (d)-(f) as (f)-(h) (No change in text.)

## 6:20-2A.1 Prescribed system of double entry bookkeeping and GAAP accounting

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

(c) All school districts shall conform to the requirements of this subchapter on [the date established by] **July 1, 1993 pursuant to [the date established by] N.J.S.A. 18A:4-14.1.**

## 6:20-2A.2 Summary statement of principles

(a)-(h) (No change.)

(i) An annual budget(s) shall be adopted by each district board of education and shall be included in the minutes of the board.

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

3. A district board of education shall take appropriate action, as necessary, to maintain a "balanced budget", that is, one in which budgeted anticipated revenues and fund balance equal budgeted appropriations.

i. (No change.)

(j)-(n) (No change.)

## 6:20-2A.4 Accounting and reporting directives

The Commissioner shall prepare accounting and reporting directives to be used by school officials in keeping the double entry bookkeeping and accounting system mandated in this subchapter and shall from time to time prepare, publish and distribute handbooks, materials or [circulars] **bulletins** for the guidance of school officials.

## 6:20-2A.5 Supplies and equipment

(a) [The Commissioner shall prescribe a list of articles to be regarded as supplies and equipment for accounting purposes.]

**Criteria to distinguish between supplies and equipment for accounting purposes as prescribed by GAAP pursuant to N.J.A.C. 6:20-2A.1 and contained in the Financial Accounting for Local and State School Systems (presently referred to as Handbook 2R2) which is established by the National Center for Education Statistics, is herein adopted by reference and on file and may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, CN 049, Trenton, New Jersey and the Department of Education, 225 West State Street, CN 500, Trenton, New Jersey.**

(b)-(e) (No change.)

## 6:20-2A.6 Mechanical bookkeeping systems

[(a) All mechanical or electronic data processing bookkeeping systems to be used by district boards of education shall be approved by the Commissioner prior to usage.]

[(b)] District boards of education which contract for electronic data processing bookkeeping services shall annually have an audit prepared or obtain a copy of an audit of the internal controls of the service company or agency as prescribed by Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants and maintain a copy of such audit on file.

## 6:20-2A.11 Overexpenditure of funds

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

**(d) A district board of education shall obtain a certification from the district board of education secretary each month that no line item account has encumbrances and expenditures which in total exceed the line item appropriation in violation of (a) above. If a violation has occurred, the district board of education shall by resolution either transfer amounts among line items and/or from free balance or direct the district board of education secretary or the chief school administrator, as appropriate, to transfer amounts among line items and/or from free balance to eliminate the line item account deficit(s). If the latter option is selected, the appropriate official shall provide a detailed report of the amounts transferred into and out of the affected line item account(s) or free balance for the board's ratification at the next regularly scheduled meeting. As applicable, the secretary's certification or a detailed account of all transfers and the board's ratification, when this option is selected, shall be reflected in the minutes of the board. All transfers shall be subject to the restrictions contained in N.J.S.A. 18A:22-8.1 and 18A:22-8.2.**

**(e) A district board of education, after review of the secretary's monthly financial report (appropriations section) and upon consultation with the appropriate district officials, shall certify in the minutes of the board each month that no major account or fund has been overexpended in violation of (b) above and that sufficient funds are available to meet the district's financial obligations for the remainder of the fiscal year. If the board is unable to make such a certification, the board shall direct the chief school administrator to initiate the steps outlined in (b) above and such directive shall be reflected in the minutes of the board.**

Recodify existing (d)-(f) as (f)-(h) (No change in text.)

## 6:20-3.1 Method of determining tuition rates

(a) (No change.)

**(b) [Whenever practicable,] The Commissioner shall certify the "actual cost per pupil" for each tuition category for a given year for each receiving district board of education based upon either:**

**1. An optional report submitted annually by the receiving district board of education indicating the actual amounts expended for each applicable item in the program for which the tuition rate is required, according to the prescribed bookkeeping and accounting system[, shall be recorded and used in determining the "actual cost per pupil". Once having determined to use the actual amount expended for any applicable line item in the program to determine the "actual cost per pupil", a district board of education must request the approval of the Commissioner to change the pro rata basis described in]; or**

**2. A report prepared annually by the Commissioner for each receiving district board of education in accordance with [(c)] (d) below[. The Commissioner may approve such requests for a change in method**

if it is apparent from documentation submitted that accounting or recordkeeping problems are the basis of the request.]

(c) **Once having determined to submit the optional report annually to the Commissioner pursuant to (b)1 above a receiving district may not have the Commissioner certify the "actual cost per pupil" pursuant to (b)2 above without the approval of the Commissioner. A receiving district requesting a change from the optional report must submit a written request to the Commissioner. The request must indicate the reason(s) for the change.**

[(c) Whenever it shall be impracticable to charge the actual amount expended for a particular item in the program for which the tuition rate is being determined, the] (d) **The share of [such] each item of expenditure for each program shall be determined on a pro rata basis in accordance with the following ratios:**

1. Administration: Ratio of number of teachers in each program to total number of teachers [of] in the system.

2. Instruction:

i. Principals' salaries: Ratio of number of teachers in each program to total number of teachers [of] in the system;

ii. Supervisors of instruction: Ratio of number of teachers in each program to total number of teachers [of] in the system;

iii. (No change.)

iv. Other instructional staff, secretarial and clerical assistants, and other salaries for instruction: Ratio of average daily enrollment in each program **to average daily enrollment for all programs;**

v. Textbooks, school library and audio-visual materials, teaching supplies, and other expenses: Ratio of average daily enrollment in each program **to average daily enrollment for all programs.**

3. Attendance and health services: Ratio of average daily enrollment in each program **to average daily enrollment for all programs.**

4. Transportation curricular activities: Ratio of average daily enrollment in each program **to average daily enrollment for all programs.** Transportation salaries and other expenses shall be excluded.

5. Operation[;], salaries and all other costs: Ratio of square feet of floor space used by each program **to total floor space used for all programs.** Such floor space shall not include offices, boiler rooms, corridors or other rooms not used by pupils. Whenever a room shall be used for two or more programs, such square footage shall be prorated as to time devoted to each program.

6. Maintenance[;], salaries and all other costs: Ratio of square feet of floor space used by each program **to average daily enrollment for all programs.**

7. Fixed charges[;]: Ratio of average daily enrollment in each program **to average daily enrollment for all programs.** [Rental] **For rental on a site or school building acquired by a lease purchase agreement pursuant to N.J.S.A. 18A:20-4.2[, except for the], only the portion of the rental which is interest[, ] shall be [excluded] included based upon the ratio of square feet of floor space used by each program for which such site or school building is used to total floor space used for all programs.**

8. (No change.)

9. Food services[;], salaries and expenses: Ratio of average daily enrollment in each program **to average daily enrollment for all programs.**

10. Student body activities[;], salaries and expenses shall be on an actual basis.

11. (No change.)

12. Building use charge: Ratio of square feet of floor space used by each program **to total floor space used for all programs** multiplied by the amount which remains after the following calculation:

i. (No change.)

ii. Multiply the debt service interest charges paid on debt for the [building] **buildings** in which the program is located by the ratio of State support obtained in (c)12i above;

iii. Subtract the amount obtained in (c)12ii above from the debt service interest charge paid on debt for the [building] **buildings** in which the program is located.

13. (No change.)

Recodify existing (d) through (f) as (e) **through (g)** (No change in text.)

6:20-5.1 Law enforcement officer

(a) [Any] **Each** district board of education intending to employ a public school law enforcement officer shall submit **an application for approval to employ school law enforcement officers** to the county superintendent of schools [an application for approval to employ school law enforcement officers].

(b) [The] **Such** application shall set forth the reasons for the request, the name of the school or schools with enrollments for which officers are requested, the hours during which [such] protection is required, a job description, the salary range to be used, the qualifications or training required, and the number of officers to be assigned to each school.

(c) If the district board of education is **also** requesting State aid, the [following information] **district board of education** shall [be filed:] **file** the name or names of the law enforcement officer or officers, the school assignment or assignments and the wages or salaries paid.

(d) The county superintendent of schools shall review **and approve** the application from the district board of education[. If] **if** there is a need for such law enforcement officer or officers[, the]. **The approved** application shall be [approved and] forwarded to the Commissioner of Education.

(e) The Commissioner of Education [will] **shall review and approve** the application[. If] **if** the appointment of such law enforcement officer or officers is necessary[, the commissioner shall] **and may** authorize a **State aid** reimbursement within the limits of available appropriations.

(f) If the district board of education has requested State aid reimbursement[, the Commissioner of Education shall, within the limits of the available appropriations for said purposes, make a determination of the amount of State aid reimbursement to which the district board of education shall be entitled. Such] **such** reimbursement shall not exceed 75 percent of the cost.

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

(i) All appointments of law enforcement officers shall be made subject to the provisions of [Title II of the] N.J.S.A. **11A:1-1 et seq.** [where applicable].

6:20-5.3 Method of determining the district of residence

(a) The district of residence for school funding purposes shall be determined according to the following criteria:

1. The "present district of residence" of a child in a residential State facility defined in N.J.S.A. 18A:7A-3 and referred to in paragraph one of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last school day of September [of the pre-budget year].

2.-3. (No change.)

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

(g) **As prescribed by P.L. 1989, c.290 (N.J.S.A. 18A:7B-12), the "district of residence" for a homeless child whose parent(s) or guardian(s) temporarily moves from one school district to another shall be the district in which the parent(s) or guardian(s) last resided prior to becoming homeless. This district shall be designated as the district of residence for as long as the parent(s) or guardian(s) remains homeless.**

6:20-5.5 [Asbestos] **Public school asbestos** removal and encapsulation State aid

(a) (No change.)

(b) A district board of education shall only be reimbursed under the provisions of the "State School Aid Act for Asbestos" for expenditures actually incurred. State aid reimbursements for projects currently planned, undertaken and substantially completed shall be adjusted [when] **once** actual expenditures **and the State aid received under any other law based upon the actual expenditures** are known. Adjustments shall only be made to the extent State aid funds are available.

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

(i) **A district board of education receiving a State aid entitlement for asbestos removal or encapsulation projects currently planned, undertaken and substantially completed, shall complete all work on the asbestos removal or encapsulation project within two years from the date the entitlement is approved. State aid funds shall not be paid when there is noncompliance with this section.**

6:20-5.6 Teaching staff member minimum salary State aid

(a) [For the 1985-86 school year and thereafter, a] A district board of education shall [for the purpose of receiving State aid pursuant to the Teacher Quality Employment Act] adopt a salary schedule(s) for full-time teaching staff members which provides that no step on the salary schedule(s) is lower than \$18,500 regardless of funding source.

(b) (No change.)

(c) The base salary for State aid shall be determined as follows:  
1. (No change.)

[2. For a teaching staff member who was employed during the 1984-85 school year with a prescribed salary based upon different steps of the salary schedule(s), the base salary shall be the actual salary paid to the teaching staff member during the 1984-85 school year.]

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

(d) (No change.)

(e) Every district board of education shall submit to the Division of Finance the salary schedule(s) prescribed for all teaching staff members for [the 1984-85] each school year [and the salary schedule(s) prescribed for all teaching staff members for the 1985-86 school year prior to September 9, 1985].

(f) [For the 1985-86 school year and subsequent school years, a] A district board of education shall not transfer out of any line item account or program category any funds replaced by State aid received pursuant to the Teacher Quality Employment Act.

[(g) For the purpose of (f) above, for the 1985-86 school year, a district board of education shall determine the amount of funds replaced by State aid as follows:

1. For each line item account or program category, determine the actual 1985-86 salary in effect prior to September 9, 1985 for all aided teaching staff members employed in the 1984-85 school year;

2. For each line item account or program category, determine the base salaries for aided teaching staff members employed in the 1984-85 school year;

3. Subtract the amount obtained in (g)2 above from that obtained in (g)1 above.]

[(h)](g) For the purpose of (f) above, [for the school years subsequent to the 1985-86 school year,] a district board of education shall determine the amount of funds replaced by State aid as follows:

1.-2. (No change.)

3. Subtract the amount obtained in [(h)](g)1 and 2 above from \$18,500. In the event the amount thus obtained is negative, the amount of funds replaced by State aid shall be zero.

[(i)](h) Any part of the funds replaced by State aid as determined in (g) [and (h)] above which remains unexpended at the completion of [the 1985-86 school year or a subsequent] any school year, shall be held as a special balance appropriated which shall only be used in subsequent school years for the payment of full-time teaching staff member salaries for duties which are part of the teaching staff [member's] members' regular contractual responsibilities.

[(j) For the 1985-86 school year a district board of education shall increase the amounts appropriated for teaching staff member salaries in the various line item accounts or program categories by an amount equal to the amount of State aid which the district board of education is entitled to receive pursuant to the Teacher Quality Employment Act.]

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

6:20-5.7 Nonpublic school asbestos removal and encapsulation State aid

(a) For the purpose of the State aid program for asbestos removal and encapsulation for nonpublic schools, the following words and terms shall have the following meanings, unless the context indicates otherwise:

"Completed project" means a project on which all of the work [was] has been finished and for which all of the cost of the project [was] has been incurred [prior to July 1, 1987].

"Currently planned project" means a project for which no funds have been expended and no work [was] has been undertaken [prior to July 1, 1987].

"Project undertaken" means a project on which work was begun [prior to July 1, 1987] which is not substantially completed [and for which 50% or less of the estimated cost of the project was expended prior to July 1, 1987].

"Substantially completed project" means a project on which work [was] has begun [prior to July 1, 1987] and for which more than 50 percent of the [estimated cost of the project was expended prior to July 1, 1987] work is completed.

(b)-(l) (No change.)

(m) A nonpublic school receiving a State aid entitlement for asbestos removal or encapsulation projects currently planned, undertaken and substantially completed shall complete all work on the asbestos removal or encapsulation project within two years from the date the entitlement is approved. State aid funds shall not be paid when there is non-compliance with this section.

6:20-6.3 Individual requests

(a) Individual written requests signed by the parent(s) or legal guardian(s) of nonpublic school pupils for the loan of textbooks shall be addressed to the district board of education in which the nonpublic school is located.

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

(e) Pupils attending public schools [are] shall not be required to submit such requests [because public school officials know what textbooks are to be used].

6:20-6.4 Ownership and storage of textbooks

(a) (No change.)

(b) The district board of education shall be responsible for the [collection] receipt of the textbooks from the vendor and inventory of such textbooks.

(c) (No change.)

6:20-6.5 Accounting entries

(a) (No change.)

(b) The cost of textbooks for pupils enrolled in the public schools shall be entered in [account 220] the general current expense fund in the account designated in the minimum chart of accounts.

(c) The cost of textbooks for nonpublic school pupils shall be entered in [account 1161 Textbooks for Nonpublic School Pupils] the special revenue fund in the account designated in the minimum chart of accounts.

(d) State aid received by the district board of education pursuant to N.J.S.A. 18A:58-37.1 et seq. shall be recorded [as regular current expense] separately in the special revenue fund as State aid.

6:20-8.1 Restricting the avoidance of competitive bidding for extraordinary, unspecifiable services

(a) Extraordinary, unspecifiable services (hereinafter referred to as "EUS") are those services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor.

(b) Any purchase, contract or agreement of the character described in N.J.S.A. 18A:18A-4, may be made, negotiated or awarded by a district board of education by resolution at a public meeting without public advertising for bids and bidding if the subject matter thereof consists of [extraordinary, unspecified services] EUS. This exception shall be construed narrowly in favor of open competitive bidding where possible and in each instance of such exception, the district board of education is required to state the supporting reasons for its action in the resolution awarding the contract. The use of such exception shall be further limited by the following conditions:

1. The assertion that the service can only be provided by a single contractor ("sole source") shall not be sufficient alone to justify avoidance of competitive bidding as an [extraordinary, unspecifiable service (hereinafter referred to as) EUS];

2.-4. (No change.)

5. Services rendered as EUS must generally be characterized as not being of a continuous ongoing nature. Services which are continued or regularly repetitive shall be subject to a presumption that specifications can be written to describe what has been done. Where this is not the case, the district board of education must specifically address this question;

6.-9. (No change.)

6:20-8.2 Certain leases of equipment and service agreements beyond the fiscal year

(a) Leases (which term includes rental agreements) and service agreements for automobiles, motor vehicles, electronic communications equipment[,] and machinery and equipment of every nature and kind may not be renewed or extended beyond five years. Rebidding after [the] five years should not require that the equipment be in the service of the district board of education.

(b) Such leases and service agreements may be written for any period of time not to exceed [the] five years, or for shorter periods with provision for renewal at the option of the district board of education provided that such renewal shall not cause the cumulative length to exceed five years. Such renewals may be authorized only by resolution of the district board of education.

(c) In addition to providing for the use of equipment during the period of the lease, the lease may provide for rental payments to be credited towards the purchase price for purpose of acquisition of the equipment if the district board of education, at its sole option, decides to buy the equipment, and said option was included in the original specifications and in the original contract. Leases may not, however, provide for the acquisition of ownership at the beginning of the lease term, with installment payments to be made thereafter.

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

6:20-8.3 Change orders and open-end contracts

(a) Definitions include the following:

1. (No change.)

2. Open-end contracts are contracts for which price bids were solicited on a unit basis because exact quantities needed were not known at the time bids were sought. [Examples would include black-topping and recreation supplies.] Such contracts, when advertised and awarded, must include a maximum number of units that can be ordered for each item under the contract. Orders placed under such open-end contracts shall not be considered as change orders for purposes of this rule, but shall be subject to the requirements specified in [(g)] (f) below.

(b) (No change.)

(c) Professional [and/or consultant] and EUS contract change orders shall be governed by the following:

1.-4. (No change.)

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

6:20-8.4 Bonds

(a) Types of bonds include:

[(a)]1. (No change in text.)

[(b)]2. (No change in text.)

[(c)]3. (No change in text.)

[(d)](b) (No change in text.)

**(a)**

**STATE BOARD OF EDUCATION  
School Facility Planning Service**

**Proposed Redoition with Amendments: N.J.A.C.  
6:22**

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

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:18A-16, 18A:18A-18, 18A:18A-39, 18A:20-36, 18A:33-1 et seq. and 52:27D-130.

Proposal Number: PRN 1990-200.

Submit written comments by May 16, 1990 to:  
Irene Nigro, Rules Analyst  
New Jersey Department of Education  
225 West State Street, CN 500  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 6:22 expires on September 30, 1990. The State Board of Education has reviewed these rules and found them to be reasonable, necessary and proper for the purposes for which they were promulgated.

The rules formerly at N.J.A.C. 6:22, School Facility Planning Service, were invalidated by the enactment of P.L.1983, c.496 (N.J.S.A. 52:27D-121 et seq.), "An Act to Amend and Supplement the State Uniform Construction Code Act," effective April 17, 1984. Therefore, N.J.A.C. 6:22 was allowed to expire on July 1, 1984 pursuant to Executive Order No. 66(1978). The Department of Education, in conjunction with the Department of Community Affairs, worked toward the development of the existing rules contained in Chapter 22, which became effective on October 21, 1985 as R.1985 d.527, which are now being proposed for readoption with amendments.

The purpose of these rules was to establish requirements for school facility planning and for the adoption by reference of the State Uniform Construction Code (U.C.C.) and enhancement to the U.C.C. which provide design standards for educationally adequate, healthy and safe school facilities necessary for a thorough and efficient education.

Chapter 22 includes Department of Education review and approval of plans and specifications for the temporary and permanent construction, erection, reconstruction, alteration, conversion and renovation of public school facilities, private schools for the handicapped and schools for the handicapped operated by the State Department of Human Services.

The readoption of N.J.A.C. 6:22 includes an extensive recodification which should provide a clearer understanding of the review and approval process for school facilities.

A more detailed summary of the rules proposed for readoption and the amendments thereto are presented below:

In subchapter 1, N.J.A.C. 6:22-1.1 is being deleted and recodified as a separate subchapter, and is being proposed as new rules. It now includes N.J.A.C. 6:22-1.1 through 1.7 and describes the three-step plan approval process required by the Department of Education, including (1) schematic, (2) preliminary and (3) final plan approval. Educational specifications are also required to be approved by the Bureau of Facility Planning Services. The previous rules allowed the educational specifications to be submitted at the same time as the schematic plans. The proposed new rules require approval of the educational specifications prior to the submission of the schematic plans. The new rules will eliminate the confusion which arises when the educational specifications continue to be revised during the development of the schematic plans. This new process will save both time and money for the school districts or agency submitting plans and specifications to the Department of Education, Bureau of Facility Planning Services for approval. Under the rules, the final plan submission will require a completed "checklist" which will indicate plans and specifications are complete and ready for final review and approval. This new procedure will prevent the submission of incomplete plans, will eliminate confusion and save valuable review time. It will also require submission of a project schedule, which provides realistic time-frames for the review and approval of plan submissions. In addition, construction cost estimates are to be included in the submission and shall be escalated to include accurate time-frames which include project development time, review and approval time and bidding time. The rules still indicate that the Department of Education is the plan approval agency for school construction projects requiring review for educational adequacy. Local construction officials will approve plans for construction projects where a review for educational adequacy is not necessary. Local construction officials will continue to be responsible for issuing building permits, conducting inspections and issuing a certificate of occupancy in connection with all construction projects by district boards of education. Previously, the local construction official collected 80 percent of the total fee for performing his or her responsibilities. This fee collection has been deleted as a result of an amendment to Section 4 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-8), which exempts a board of education from the payment of fees to a municipal agency.

Previous section N.J.A.C. 6:22-1.6 is proposed for deletion from this subchapter. One of the objectives of the Bureau of Facility Planning Services is to provide technical assistance to school districts in planning for facility improvements projects. This administrative function need not be detailed in the rules. The Bureau proposes deleting the list of publications now provided to allow the flexibility to add, delete or change bulletins or publications without specifying the titles in code. This information is being deleted from the rules because it is not regulatory in nature.

In subchapter 2, N.J.A.C. 6:22-2.1 and 2.2 define the Department of Education's responsibility for reviewing and approving land acquisitions and dispositions. These sections have been recodified from subchapter 1, N.J.A.C. 6:22-1.2 and 1.3 and amended.

In subchapter 3, N.J.A.C. 6:22-3.1 and 3.2 define the approval procedures for the acquisition of existing buildings for school use and the closing of schools. Amendments to these sections will now require the submission of prior approvals of other State agencies, documentation that available data on soil conditions have been examined and documentation of actual soil test borings and percolation tests on any site located less than one mile from a landfill. These sections have been recodified from subchapter 1, N.J.A.C. 6:22-1.4 and 1.5.

In subchapter 4, N.J.A.C. 6:22-4.1 contains provisions recently adopted by the State Board of Education which include requirements for Department of Education approval of private schools for handicapped pupils and schools for handicapped pupils of the New Jersey State Department of Human Services. These rules provide the compliance requirements for schools for the handicapped which are the same as those required for public schools to assure the health, safety and welfare of public school students receiving public education in approved private schools for the handicapped. This section has been recodified from subchapter 1, N.J.A.C. 6:22-1.8.

In subchapter 5, N.J.A.C. 6:22-5.2, Definitions, provides an amendment to the term "change-of-use" and better describes what constitutes a "change-of-use" and provides examples such as from a classroom to a laboratory. P.L. 1983, c.496 authorized the State Board of Education to adopt enhancements to the Uniform Construction Code as amendments to the U.C.C. Since the U.C.C. does not contain many of the standards that previously existed, enhancements are required and proposed for re-adoption. In conjunction with the Uniform Construction Code, educational facility planning standards are delineated to provide general design and construction requirements for public school facilities. N.J.A.C. 6:22-5.4 is also being amended to allow a local school district the option of not having to provide individual toilet rooms for early intervention, pre-kindergarten and kindergarten classrooms within the classroom itself if other criteria are met which continue to show that the spirit and intent of the original standards are being addressed. N.J.A.C. 6:22-5.4 also requires review and approval by the Bureau of Facility Planning Services of pre-manufactured educational units, vans, trailers and other mobile units. Previously the rule indicated inspection of such facilities was to be performed by the Bureau of Facility Planning Services. However, this responsibility is performed by the local building code official and is reflected accordingly in N.J.A.C. 6:22-5.4(i)1. School space sizes and capacity requirements are based on minimum required floor area in square feet per occupant which determine the capacity of school buildings. These capacities are calculated in accordance with N.J.A.C. 6:22-5.5 which provides a table of minimum net square feet per occupant according to the proposed use of each instructional space. These sections have been recodified from subchapter 2, N.J.A.C. 6:22-2.1 through 2.5. Amendments to N.J.A.C. 6:22-2.5(f) were proposed in the February 5, 1990 New Jersey Register (22 N.J.R. 277(c)).

In subchapter 6, N.J.A.C. 6:22-6.1 contains specific standards for the approval of both on-site and off-site substandard school facilities. The county superintendents of schools approve the facilities through the first two years and the Bureau of Facility Planning Services approves the facilities before they can be used for a third successive year. The facilities shall, according to P.L.1983, c.373 (N.J.S.A. 18A:33-1.1 et seq.) be considered temporary and, therefore, the district boards of education must develop plans for their upgrading or abandon the facility site after five years. This section has been recodified from subchapter 3, N.J.A.C. 6:22-3.1.

In subchapter 7, N.J.A.C. 6:22-7.1 requires each school district to maintain a long-range facilities plan which projects a five-year estimate of capital construction needs. These plans are required to be updated every five years, from the original submission date of July 1, 1985, and are to be submitted to the county superintendent of schools. Facility plans are to be revised and updated whenever construction plans are submitted to the Bureau of Facility Planning Services. This section has been recodified from subchapter 4, N.J.A.C. 6:22-4.1.

In subchapter 8, N.J.A.C. 6:22-8.1 continues to provide a process for appeals and hearings for district boards of education, private schools for handicapped pupils and schools for handicapped pupils operated by the Department of Human Services. This section also provides a process for obtaining a variance from the Department of Education's requirements and the State Uniform Construction Code. This section has also been

amended to require any appeal to be requested in writing to the Bureau Director. In addition, the word "action" of the Bureau has been more accurately changed to read "decision" of the Bureau. This section has been recodified from subchapter 1, N.J.A.C. 6:22-1.7.

#### Social Impact

The School Facility Planning Service rules, N.J.A.C. 6:22, through their own specifications or reference to the State Uniform Construction Code, N.J.A.C. 5:23, contain the standards for educationally adequate, healthy and safe school facilities necessary for a thorough and efficient education.

The general provisions of the chapter require approval by the Department of Education, Bureau of Facility Planning Services, for the acquisition and disposal of land for school sites, the acquisition of existing buildings and approval for the closing of a school or schools. These approvals are necessary to be certain that the proposed land acquisition is satisfactory for the development of its proposed use and to also determine the adequacy of the land should a school decide to dispose of a portion of the land.

The chapter also provides standards for the planning of educational facilities and minimum space sizes and room capacities which afford suitable accommodations for study, class and laboratory work; library services; health and physical education; guidance and counseling; industrial, vocational and homemaking instruction; administration; food services; health services; art and music education; and other services generally recognized in the approval of a school. These standards must be checked against the proposed plans to ascertain whether or not the educational facility has been properly planned and will provide the necessary space requirements for each of its functional uses.

One of the problems which currently exists in the administration of these rules is the amount of time required to complete a comprehensive and accurate review of plans and specifications for code compliance. To eliminate some of the problems with time delays, N.J.A.C. 6:22-1.1(b)3ix is amended to require the submission of a "checklist" indicating plans and specifications are complete and ready for code review. The implementation of this new procedure will prevent the submission of incomplete documents which in the past has created more confusion and has wasted valuable review time within the Bureau of Facility Planning Services. In addition, an amendment to N.J.A.C. 6:22-1.1(b)1, will require the submission of an accurate project schedule which will include a more realistic period of time for the review and approval of plan submissions. This schedule will provide everyone concerned with a facilities project a more realistic time schedule.

N.J.A.C. 6:22-1.1 is amended to require submission of a construction cost estimate escalated to the mid-point of construction so that the project cost will be a more accurate estimate and should not escalate during the code review and approval phase as administered by the Bureau of Facility Planning Services.

The proposed amendments will provide more accurate information to the public regarding project schedules and project costs for the construction of educational facilities.

#### Economic Impact

The proposed re-adoption and amendments to N.J.A.C. 6:22, School Facility Planning Service, creates no new increased economic impact on school districts. Fees charged for plan review are based on a fee schedule which has been developed by the Department of Education as specified in N.J.A.C. 5:23-4.20. Fees are based on the size and complexity of the project and are similar to fees charged by other State agencies which perform plan review services similar to the Bureau of Facilities Planning Services. Fees for plan review vary between \$100.00 and \$33,000.00. The total cost for fees had previously been divided between the Department of Education, which collected 20 percent of the total fee for the review of plans and specifications, and the local municipality, which collected 80 percent of the total fee for the issuance of the construction permit, completion of the required inspections during construction and issuance of the required certificate of occupancy upon completion of the project.

Fees presently being charged to school districts shall not increase due to the revisions and re-adoption of the School Facility Planning Service Code. There will, however, be a decrease in cost to the school districts as a result of an amendment to Section 4 of P.L. 1975, c.291 (N.J.S.A. 40:55D-8) which exempts a board of education from the payment of fees to a municipal agency. The 80 percent portion of the fee will therefore not be required for payment. In conjunction with this was another approved amendment to Section 1 of P.L. 1985, c.409 (N.J.S.A. 52:27D-126c) which also exempts a school board from payment of fees to any department or agency of State government with the exception of the required fees to the Department of Education for plan review.

Fees are also required for the design services of an architect or engineer and will vary between 6 percent and 10 percent of the construction cost. These fees, which are currently required, are necessary to provide the needed design services and are not an increased cost to either the public or nonpublic schools.

#### Regulatory Flexibility Analysis

Approved private schools for the handicapped, which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are required to comply with the rules proposed for readoption. The proposed revisions will have some ongoing costs, such as plan review and building permit fees. However, the impact will be minimal and will have no adverse economic impact on these businesses. The compliance requirements for approved private schools for the handicapped are the same as those for public schools to assure the health, safety and welfare of the public school students who are receiving public education in private schools. They cannot, therefore, be exempt from design standards.

All schools, including approved private schools for the handicapped, which are subject to compliance with these rules are required to employ either an architect or engineer to complete design work to assure compliance with codes. It is not anticipated that the fees of the consultants will increase as a result of the readoption of these rules. All schools already require drawings and specifications signed and sealed by a registered architect or licensed engineer in order to obtain a local building permit and the proposed amendments will not increase this cost. The rules require that these same drawings and specifications be reviewed and approved by the Department of Education prior to submission to the local code enforcing agency for the application of the required building permits.

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

### [SUBCHAPTER 1. GENERAL PROVISIONS]

#### [6:22-1.1 Approval of plans and specifications

(a) Educational specifications describing the programs and activities to be housed in the proposed facility, the types, numbers and sizes in square feet of the spaces within the proposed facility and the spatial relationships between and among the spaces shall be submitted at the same time as the schematic architectural plans. The educational specifications shall bear the signature of the president of the district board of education and chief school administrator as evidence of certification of approval by the district board of education.

(b) Plans and specifications for the temporary and permanent construction, erection, reconstruction, alteration, conversion and renovation of private school facilities shall be submitted to the Department of Education, Bureau of Facility Planning Services whenever a review for compliance with this chapter is necessary. An architect or engineer licensed in New Jersey shall submit the plans and specifications on behalf of the district board of education as follows:

1. One set of schematic plans shall be approved before funds are authorized locally via a bond referendum, lease-purchase agreement, gift or any other means of financing building construction, erection, reconstruction, alteration, conversion or renovation. This set of plans shall be submitted with a project cost estimate, site plan, educational specifications and an updated long-range facility plan. The review for educational adequacy shall take into consideration the suitability of the site; size, location and number of instructional and ancillary spaces; furniture and equipment; circulation patterns; provisions for the handicapped; maintenance, security and energy conservation; and locations of future additions. Room sizes shall meet or exceed minimum acceptable net and gross areas as required in N.J.A.C. 6:22-2.5.

i. Schematic plans shall include layouts of the built-in and movable furniture and equipment drawn to a scale of no less than 1/8 inch or a list of the built-in and movable furniture which shows the dimensions and square feet of each item for an instructional space which is typical of any kind of instructional space.

2. One set of preliminary plans shall be submitted after funds are authorized locally. This set of plans shall include room layouts, a statement regarding the method of heating and ventilation, a description of lighting and building elevations. For additions, a floor plan of the existing building showing the present and proposed use of all

areas, including the identification in writing on the plans of all areas, and documentation that the Department of Environmental Protection is reviewing the methods of sewerage disposal and water supply shall be included. The preliminary plan review for educational adequacy is an extension of the schematic review for educational adequacy.

3. Four sets of signed and sealed final plans and specifications shall be submitted for review and approval after preliminary plan approval. This submission shall include the following:

- i. A completed final application;
- ii. A completed fee schedule as specified in N.J.A.C. 5:23-4.20;
- iii. A check payable to the "Treasurer, State of New Jersey" for 20 percent of the total fee;
- iv. The results of soil borings;
- v. The appropriate documents indicating compliance with the energy subcode;
- vi. The approval letter from the New Jersey Department of Agriculture regarding soil erosion control;
- vii. The approval letters from the New Jersey Department of Environmental Protection regarding sewerage disposal, water supply, gas installations, major excavations and air contaminant control apparatus or equipment.

4. Bids may be advertised for and received only after the release of final plans from the Department of Education, Bureau of Facility Planning Services. Following approval of said bids by the Bureau, the district board of education may sign contracts and apply to the municipal construction enforcing official for the required building permits. The local municipal construction enforcing official will issue the construction permit, collect 80 percent of the total construction permit fee, perform the required inspections during construction and issue the required certificate of occupancy upon completion of the project. The district board of education shall send to the New Jersey Department of Education, Bureau of Facility Planning Services a copy of the certificate of occupancy obtained from the local construction agency.

5. When there are practical difficulties involved in meeting the requirements of the State Uniform Construction Code, the designated and licensed construction official in the Department of Education, Bureau of Facility Planning Services may vary the rules provided the spirit and intent of the rules are observed and the public welfare and safety is ensured. Variations to the State Uniform Construction Code may be acted upon in accordance with N.J.A.C. 5:23-1.1 et seq.

6. Before construction contracts are awarded, the district board of education shall submit for approval to the Department of Education a list of the contractors which have been selected, the amount of each contract, the amount of each contractor's uncompleted contracts and a copy of the contractor's prequalifications and classification statement.

7. A copy of each contract shall be filed with the Department of Education, Bureau of Facility Planning Services.

8. All plans and specifications for public school construction projects shall be prepared by an architect or professional engineer licensed to practice in the State within the limits covered by such registration. The Department of Education, Bureau of Facility Planning Services shall accept plans for review only from licensed professionals who have been retained by the district board of education for the project. Each page of the plans and the title page of the specifications shall bear the signature and embossed seal of the architect and/or professional engineer. The name, signature and embossed seal of the consulting professional engineers shall be placed on their own plans.

(c) Types of work requiring a review by the Department of Education shall consist of the following:

1. New school building;
2. An addition to an existing school building;
3. A change involving the total number of instructional spaces or the number of any one kind of instructional space;
4. A change in the dimensions (volume and/or area) of any instructional space;
5. A change in the age group or grade level of the students assigned to the school;

6. A change in use requiring the conversion of a space from one function to another causing physical renovation to satisfy educational program needs and/or the Uniform Construction Code;

7. A change in the general office area or the school board office building that involves instructional spaces;

8. A change in locker and toilet rooms including those contained within field houses, weight rooms and game rooms;

9. A change to the athletic fields and tracks;

10. The utilization of pre-manufactured trailers and vans;

11. Any site or building change or alteration for the purpose of making the site and school barrier free and accessible to handicapped persons as per N.J.A.C. 5:23 and Section 504 of the Federal Rehabilitation Act of 1973;

12. The utilization of prefabricated facilities for instructional purposes. The placement of prefabricated facilities including relocatables, on a school site is considered new construction.

(d) Construction projects that do not require a review for educational adequacy shall be submitted to the local municipal construction enforcing agency in accordance with N.J.A.C. 5:23-2.

(e) All buildings and structures and parts thereof, both existing and new, shall be maintained in a safe, sanitary and energy efficient condition. All service equipment, means of egress, devices and safeguards which are required by the State Uniform Construction Code in a building or structure or were required by a previous statute for a building or structure, when erected, altered or repaired, shall be maintained in good working order.]

#### SUBCHAPTER 1. APPROVAL OF PLANS AND SPECIFICATIONS BY THE DEPARTMENT OF EDUCATION, BUREAU OF FACILITY PLANNING SERVICES

##### 6:22-1.1 Types of building construction work requiring Department of Education review

(a) Types of building construction work requiring a review by the Department of Education are as follows:

1. New school buildings including pre-fabricated facilities;
2. An addition to an existing school building;
3. A change involving the total number of instructional spaces or the number of any one kind of instructional space;
4. A change in the dimensions (volume and/or area) of any instructional space;
5. A change of use as defined in N.J.A.C. 6:22-5.2;
6. The utilization of pre-manufactured trailers and vans; and
7. Any site or school building change or alteration for the purpose of making the site and school barrier free and accessible to handicapped persons as per N.J.A.C. 5:23 and Section 504 of the Federal Rehabilitation Act of 1973.

(b) Other construction projects that do not require a review for educational adequacy shall be submitted to the local municipal construction enforcing agency in accordance with N.J.A.C. 5:23-2.

##### 6:22-1.2 Educational specifications for building construction or modifications

(a) Educational specifications shall be prepared in writing detailing all the facilities considered for the construction program and shall be submitted to the Department of Education, Bureau of Facility Planning Services for approval.

(b) Estimates of dimensions and square feet for each area of new or modified construction shall be provided, together with an explanation of the proposed area utilization and relationships, and shall be signed by the president of the district board of education and chief school administrator as evidence of certification of approval by the district board of education.

(c) Educational specifications and subsequent revisions must be approved prior to the submission of plans and specifications. Incomplete educational specifications will not be accepted and shall be returned to the district board of education.

##### 6:22-1.3 Architectural plans and specifications; general

(a) Architectural plans and specifications for the temporary and permanent construction, erection, reconstruction, alteration, conversion

and renovation of public school facilities shall be submitted to the Department of Education, Bureau of Facility Planning Services.

(b) A New Jersey registered architect or licensed engineer, as prescribed by N.J.S.A. 45:4B-1 et seq. which defines the practice of architecture and engineering, shall submit the architectural plans and specifications on behalf of the district board of education.

##### 6:22-1.4 Submission of schematic plans prior to local funding

(a) One set of schematic plans drawn to a scale of not less than 1/16 inch per foot shall be approved before funds are authorized locally via a bond referendum, lease-purchase agreement, gift or any other means of financing building construction, erection, reconstruction, alteration, conversion or renovation.

(b) Schematic plans shall be reviewed for conformance with the educational specifications and shall include layouts of the built-in and movable furniture and equipment drawn to a scale of not less than 1/8 inch. A list of the built-in and movable furniture which shows the dimensions and square feet of each item for an instructional space which is typical of any kind of instructional space may be included in lieu of plans of furniture and equipment layouts.

1. The review for educational adequacy shall take into consideration the suitability of the site; size, location and number of instructional and ancillary spaces; furniture and equipment, and provisions for the handicapped.

2. Room sizes shall meet or exceed the prescribed minimum acceptable net and gross areas as required in N.J.A.C. 6:22-5.5.

(c) Schematic plans shall be signed and sealed by a New Jersey registered architect or licensed engineer and signed by the president of the district board of education and chief school administrator.

(d) This set of plans shall be submitted to the Bureau of Facility Planning Services with a site plan whenever site work is being affected, a project cost estimate (including a construction cost estimate escalated to the mid-point of construction), a project schedule, a transmittal letter indicating plan submission to the county superintendent, and local planning board, when applicable, and a five-year long-range facility plan in accordance with N.J.A.C. 6:22-7.1, including a current five-year enrollment projection.

(e) The Director of the Office of Equal Educational Opportunity must receive a completed OEEQ questionnaire, in accordance with Federal regulations, from the district and make a positive recommendation in writing to the Bureau of Facility Planning Services before schematic plans can be approved.

##### 6:22-1.5 Submission of preliminary plans following local funding authorization

(a) One set of preliminary plans shall be submitted by a New Jersey registered architect or engineer on behalf of a district board of education after funds are authorized locally. This set of plans shall include:

1. A site plan whenever site work is being affected, drawn to scale, giving overall dimensions;
2. Floor plans, drawn at not less than 1/16 inch per foot, giving overall dimensions;
3. The location, size and present or intended use of all areas of the plans;
4. The tentative layout of built-in and movable furniture and equipment drawn at a scale of not less than 1/8 inch per foot;
8. Building elevations and sections indicating the finished floor elevations and ceiling heights and their relationship to the finished outside grade; and
9. Documentation that the local district has applied to the Department of Environmental Protection for review of the methods of sewerage disposal and water supply such as a copy of the letter of transmittal.

(b) Preliminary plans shall be signed and sealed by a New Jersey registered architect or licensed engineer, and signed by the president of the district board of education and chief school administrator.

##### 6:22-1.6 Submission of final plans

(a) When written receipt of preliminary plan approval has been received by the architect or engineer and the district board of education, one set of final plans, drawn to a scale of not less than 1/8 inch per foot, and specifications, signed and sealed by a New Jersey registered architect or licensed engineer and signed by the president of the district board of education and chief school administrator shall be submitted

to the Bureau of Facility Planning Services for review and approval. This submission shall include the following:

1. A completed final application;
2. A completed fee schedule as specified in N.J.A.C. 5:23-4.20;
3. A check payable to the "Treasurer, State of New Jersey" for 20 percent of the total fee;
4. The results of soil analysis;
5. The appropriate documents indicating compliance with the energy subcode;
6. A copy of a letter requesting approval from the New Jersey Department of Agriculture regarding soil erosion control;
7. A copy of a letter requesting approval from the New Jersey Department of Environmental Protection regarding sewerage disposal, water supply, gas installations, major excavations and air contaminant control apparatus or equipment;
8. Room layouts for all typical spaces;
9. A completed "Checklist: Subcodes of the State Uniform Construction Code to Assist in the Design Completion of Public School Buildings," as provided by the Department of Education, Bureau of Facility Planning Services, signed by the architect or engineer certifying compliance and signed by the president of the district board of education and chief school administrator; and

10. A copy of letters requesting approval from all State agencies having jurisdiction over wetlands, pinelands, and waterfront development applicable to site development and public school construction.

(b) Copies of letters of approval from all other State agencies having jurisdiction over this project shall be required prior to receiving final approval from the Bureau of Facility Planning Services. Upon written receipt of final approval to the architect or engineer and to the district board of education, four sets of final plans and specifications, including a cover sheet signed by the president of the district board of education and chief school administrator, shall be submitted to the Bureau of Facility Planning Services for approval and distribution.

1. Each page of the plans and the title page of the specifications shall bear the signature and embossed seal of the architect or engineer.

2. The name, signature and embossed seal of the consulting engineers shall be placed on their own plans.

(c) The scope of the review of final plans shall include those code sections specifically identified in the "Plan Review Record" of the Building Officials and Code Administrators (BOCA) International, Incorporated, for the building, fire, mechanical and structural codes. Plans shall also be reviewed for compliance with the barrier-free subcode N.J.A.C. 5:23-7, electrical code N.J.A.C. 5:23-3.16 and plumbing code N.J.A.C. 5:23-3.15.

#### 6:22-1.7 Bids, construction permits and variances

(a) Bids may be advertised, received, and contracts awarded only after the receipt of final plans, specifications and written approval from the Department of Education, Bureau of Facility Planning Services.

(b) Following the Department's approval, the district board of education may sign contracts and apply to the municipal construction enforcing official for the required building permits.

(c) When there are difficulties involved in meeting the requirements of the State Uniform Construction Code, the designated and licensed construction official in the Department of Education, Bureau of Facility Planning Services may vary the rules provided the spirit and intent of the rules are observed and the public welfare and safety is ensured.

1. Variations to the State Uniform Construction Code may be acted upon in accordance with N.J.A.C. 5:23-1.

2. Fees will be submitted for each variance request as per the fee schedule of the Bureau of Facility Planning Services in accordance with N.J.A.C. 5:23-4.20(c)4ix.

## SUBCHAPTER 2. ACQUISITION AND DISPOSAL OF LAND

### [6:22-1.2]6:22-2.1 Approval of land acquisition for school sites

(a) (No change.)

(b) Before any action is taken to purchase or otherwise acquire or lease land, approval of the adequacy of the land from the Department of Education, Bureau of Facilities Planning Services is required. To consider the approval of such land, the [manager] Director of the Bureau of Facility Planning Services shall be provided with the following:

1. A written request [from the district board of education] for [such] approval from the district board of education, which includes a statement indicating the immediate and ultimate proposed uses of the land in terms of grade organization and potential maximum enrollment;

2. [A statement] Statements from the State Department of Environmental Protection or a local or county water/sewerage agency certifying that:

i. [the] The land can be adequately provided with the necessary water for the proposed maximum enrollment;

ii. The land can be adequately provided with the necessary and acceptable sewerage disposal system for the proposed maximum enrollment; and

iii. The land is not subject to wetlands, pinelands or the waterfront development acts. [and an acceptable sewerage disposal system for the proposed ultimate maximum enrollment and that the project has no potential for a substantially adverse environmental impact;]

3. A statement from [an] a New Jersey registered architect or licensed engineer indicating that the land to be acquired is suitable for the proposed use;

4. A [complete] completed plot plan of the land to be acquired[,] showing topographical and contour lines, all adjacent properties and access roads. The acreage and dimensions of the tract proposed for acquisition shall be included as per the application of the standards for minimum acceptable school site sizes in (c) below and on it shall be shown the intended location of the school and a layout of the locations of all other structures, play and recreation areas, athletic fields, walkways, roadways, access roads, buffer and set-back zones, and parking areas;

5-8. (No change in text.)

9. Data regarding the impact of such a facility upon racial balance within the district's public schools; [and]

10. Recommendations of the local planning board in the municipality which has an approved master plan or portion thereof as required by N.J.S.A. 40:55D-31, 18A:18.49 and 18A:18A-16[.];

11. Prior approvals of other agencies such as the State Departments of Agriculture and Environmental Protection and the Pinelands Commission;

12. Documentation that available data on soil conditions have been examined by the architect or engineer; and

13. Reports by the architect or engineer of actual soil test borings and percolation tests on any site located less than one mile from a landfill.

(c) School site sizes shall be directly related to the acreage required for the structures and activities to be situated therein. Except where specifically noted, the acres shall be considered for single use. Only where specifically noted can the acres be designated for multiple use, for example, using the same acres for sports which occur at different times of the year.

(d) All [School] school sites shall include the following:

[1. An elementary school site shall have sufficient acreage for:

i. The placement of the school building;

ii. Expansion of the school building to its maximum capacity;

iii. The placement of all other structures such as storage buildings, school bus maintenance buildings or garages and any other structure, above or below ground, which is to be placed thereon.

iv. Basic all-purpose play and recreation field(s);

v. Walkways and roadways on which people and vehicles traverse the site;

vi. Public and service access roads onto the site including, where warranted, a one-way school bus road of 30 feet width or a two-way road of 36 feet width; a school bus drop-off area; and, 18 feet wide lanes for fire apparatus;

vii. The provision for fire apparatus of a 30 feet wide access around the entire building; and

viii. The provision for the building to be set back and for buffer zones as required by local and State codes.

2. An elementary school site may include the following, for which sufficient acreage must be provided:

i. Parking for faculty, staff and the public;

ii. Landscaping and aesthetics;

iii. Community—use facilities such as tennis courts, “tot lots” and basketball courts;

iv. Other structures or activities required by the educational program; and

v. A separate kindergarten play area.

3. A junior high or middle school shall have sufficient acreage for the following:

- i. The placement of the school building;
- ii. Expansion of the building to its maximum capacity;
- iii. The placement of all other structures such as storage buildings, school bus maintenance buildings or garages and any other structure, above or below ground which is to be placed thereon;
- iv. Basic multi-purpose physical education and recreation field(s);
- v. Walkways and roadways on which people and vehicles traverse the site;
- vi. Public and service access roads onto the site including, where warranted, a one-way school bus road of 30 feet width and a two-way road of 36 feet width; a school bus drop off area, and 18 feet wide lanes for fire apparatus;
- vii. A 30 feet wide access around the entire building; and
- viii. The provision for the building to be set back and for buffer zones as required by local and State codes.

4. A junior high or middle school site may include the following for which sufficient acreage must be provided:

- i. Parking for faculty, staff and the public;
- ii. Landscaping and aesthetics;
- iii. Community-use facilities such as tennis courts and basketball courts;
- iv. Athletic fields with proper geographical orientation for practice and competition in selected sports such as football, soccer, baseball, softball, field hockey; multi-use of fields may be possible and are permitted here; and
- v. Spectator facilities as related to the sports activities.]

[5. A senior high or junior-senior high school shall have sufficient] **1. Sufficient acreage for the following:**

- i.-iii. (No change in text.)
- iv. Basic multi-purpose physical education and recreation field(s) **as defined by the educational specifications in N.J.A.C. 6:22-1.2;**
- v. (No change in text.)
- vi. Public and service access roads onto the site including, where warranted; a one-way school bus road of 30 [feet] **foot** width and a two-way road of 36 [feet] **foot** width; a school bus drop off area, and 18 [feet] **foot** wide **posted fire** lanes for fire apparatus;
- vii. A 30 [feet] **foot** wide access around the entire **building** [school]; and
- viii. (No change in text.)

[6. A senior high junior-senior high school site may include the following for which sufficient acreage must be provided:

- i. Parking for faculty, staff, students and the public;
- ii. An area provided for landscaping and aesthetics;
- iii. Community-use facilities such as tennis courts and basketball courts;
- iv. Athletic fields and facilities for practice and competition in selected sports such as track and field, football, soccer, baseball, softball, and field hockey; and practice and competition related to march band activities, multi-use fields may be possible and are permitted here; and
- v. Spectator facilities as related to the sports activities.]

(e) **Land owned by a board of education which does not meet the standards of this section may be supplemented by adjacent municipally owned land so long as such land is formally leased on a long-term basis to the board of education for exclusive use during school hours.**

[(d)] (f) If [after 18 months from the date of approval of a school site by the bureau,] a district board of education does not have authority to acquire [the site] **the land** by bond referendum, an approved lease-purchase agreement or other statutory means, **within 18 months from the date of approval of a school site by the Bureau,** the district board of education shall re-submit the information required in (b) above for consideration and approval before any action is taken to conduct a bond referendum, or purchase, lease-purchase or otherwise acquire the site.

[6:22-1.3] **6:22-2.2 Approval for the [Disposal] disposal of land for school sites**

(a) If an approved school site on which there is an operational school building is to be altered through sale, transfer or exchange of all or part of the total acreage, a written [application] **request** for approval shall be made to the Department of Education, Bureau of Facility Planning Services. A copy of the [application] **request** shall be sent to the county superintendent of schools who shall make recommendations to the Bureau, with a copy of the recommendations to the district board of education.

(b) **Written approval or disapproval shall be given to the county superintendent with a copy to the district board of education.**

SUBCHAPTER 3. SUBSTANDARD SCHOOL FACILITIES has been recodified to Subchapter 6.

**SUBCHAPTER 3. ACQUISITION OF EXISTING BUILDINGS AND CLOSINGS**

[6:22-1.4] **6:22-3.1 Approval for the [Acquisition] acquisition of existing buildings**

(a) A district board of education planning to acquire any existing building or facility through purchase, gift, lease or otherwise shall comply with all procedures and rules pertaining to the appropriation and use of capital funds as required by N.J.S.A. 18A:20-4 and 18A:20-4.2 and shall also have the building approved in accordance with the rules of this chapter which apply to the construction of a new building.

(b) **Off-site facilities which are to be procured for temporary, emergency use must comply with N.J.A.C. 6:22-6 Substandard School Facilities.**

[6:22-1.5] **6:22-3.2 [School closings] Approval for the closing of a school or schools**

(a) The district board of education shall [supply] **provide** the Department of Education, Bureau of Facility Planning Services with **the following assurances** [information as delineated in (a)1, 2 and 3 below which assures] that with the closing of a school or schools:

1. Sufficient school building capacity **exists** [as calculated according to N.J.A.C. 6:22-2.5(a)i and ii exists] to house district students following such closing **for each of the succeeding five years;**
- 2.-3. (No change.)

(b) A letter of approval from the Bureau is required [to close a school] **before the closing of a school or schools.**

[(c) The information required in (a) above shall be provided before a final district board of education decision is made.]

[6:22-1.6 Planning recommendations

(a) The Bureau of Facility Planning Services, Department of Education shall develop publications which provide assistance in the planning of public school facilities. The publications shall be contained in the Educational Facility Publication Series which includes, but is not limited to, the following:

1. Educational Specifications;
2. Greenhouses for Schools;
3. Instructional Media Center;
4. School Capacity;
5. School Sites: Selection, Development and Utilization; and
6. Science.

(b) The publications in (a)1 through 6 above are available from the Office of Central Services, New Jersey Department of Education, 225 West State Street, CN 500, Trenton, New Jersey 08625.]

[6:22-1.7 Appeals and hearing process] has been recodified as **Subchapter 8. APPEALS AND HEARING PROCESS.**

**SUBCHAPTER 4. APPROVAL OF PRIVATE SCHOOLS FOR HANDICAPPED PUPILS AND SCHOOLS FOR HANDICAPPED PUPILS OF NEW JERSEY DEPARTMENT OF HUMAN SERVICES**

[6:22-1.8] **6:22-4.1 Requirements for Department of Education approval of private schools for handicapped**

pupils and schools for handicapped pupils of the New Jersey State Department of Human Services

(a) This [section] **subchapter** shall govern review of facilities for private schools for handicapped pupils which are approved or seeking approval pursuant to N.J.A.C. 6:28-7 and schools for handicapped pupils operated by the Department of Human Services. Bureau of Facility Planning Services review is required for the type of work set forth in N.J.A.C. 6:22-1.1[(c)](a).

(b) Submission and review of plans and specifications will be conducted as follows:

1. Educational specifications shall be prepared and submitted as per N.J.A.C. 6:22-[1.1(a)]**1.2** except that they shall be signed by designated officials of the private schools for handicapped pupils or the State Department of Human Services.

2. [An architect] **A New Jersey registered architect** or [an] **licensed engineer [licensed in New Jersey]**, as required by N.J.A.C. 5:23-2.15, shall submit the plans and specifications for the temporary and permanent construction, erection, reconstruction, alteration, conversion and renovation of facilities to the Bureau of Facility Planning Services on behalf of the private schools for handicapped pupils and the State Department of Human Services for review and subsequent approval for compliance with this chapter.

3. For review and subsequent approval for compliance with the Uniform Construction Code (U.C.C.), N.J.A.C. 5:23, plans and specifications shall be submitted by the private schools for the handicapped pupils to the local construction official of the municipality in which the facility will be constructed and by the State Department of Human Services to the Division of Building and Construction, State Department of the Treasury.

[3.]**4.** The plans and specifications shall be submitted to the Bureau of Facility Planning Services as per N.J.A.C. 6:22-[1.1(b)] and 3.]**1.3, 1.4, 1.5 and 1.6.**

(c) Variances to the State Uniform Construction Code shall be made according to N.J.A.C. 5:23-2.9 through 2.13. Requests for variances to N.J.A.C. 6:22-[1.2, 2.4 and 2.5]**2.1, 5.4 and 5.5** shall be in writing to the [manager] **Director**, Bureau of Facility Planning Services who may approve them provided the spirit and intent of the standards are observed and the need for variances is satisfactorily documented.

(d) Acquisition of land for a school site shall be according to N.J.A.C. 6:22-[1.2(b) and (c)]**2.1(b) through (d).**

(e) Disposal of land used as a school site shall be according to N.J.A.C. 6:22-[1.3]**2.2.**

(f) (No change.)

(g) Appeals and hearings arising from action of the Bureau of Facility Planning Services shall be according to N.J.A.C. 6:22-[1.7] **8.**

(h) Reviews of plans and specifications of facilities of private schools for handicapped pupils and schools for handicapped pupils operated by the State Department of Human Services shall be done to assure that the design adheres to:

1. School site sizes, N.J.A.C. 6:22-[1.2]**2.1;**
2. Enhancements to Uniform Construction Code, N.J.A.C. 6:22-[2.3]**5.3;**
3. Educational facility planning standards, N.J.A.C. 6:22-[2.4]**5.4**

(a) [to] **through (h);**  
 4. School space sizes and capacity, N.J.A.C. 6:22-[2.5]**5.5;** and  
 5. [N.J.A.C. 5:23, the] **The State Uniform Construction Code, N.J.A.C. 5:23.**

(i) **Emergency provisions for accommodation of school pupils in substandard school facilities shall be according to N.J.A.C. 6:22-6.1.**

**SUBCHAPTER [2.] 5. APPLICATION OF THE UNIFORM CONSTRUCTION CODE**

[6:22-2.1] **6:22-5.1 Model code adoption**

(a) The State Board of Education hereby confirms that public school construction shall be done in accordance with the State Uniform Construction Code, hereafter referred to as the U.C.C.

1. This document is available for review at the **Offices of the Bureau of Facility Planning Services**, Department of Education, 1676 N. Olden Avenue, Trenton, New Jersey 08625] or at the Office of Administrative Law, [CN 301,] Trenton, New Jersey. [08625.]

2. This document may be purchased from the New Jersey Department of Community Affairs, [CN 805,] Trenton, New Jersey. [08625.]

[6:22-2.2] **6:22-5.2 Definitions**

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

...  
 "Built-in equipment" means equipment that is constructed into the building **and not easily removed from its location** at the time of construction or added later.

"Change-of-use" means any change [in] **from the approved educational use or educational function** [, such as from a classroom to a laboratory or other specialized activity space and/or change in age group of occupants as from pre-kindergarten or kindergarten to elementary or elementary to secondary.] **of a space wherein the new use would by the U.C.C. require physical, mechanical or electrical changes. Some examples of a change-of-use are: classroom to laboratory or other specialized activity space, or storage room to classroom.**

"Core facilities" means those spaces in a school building which serve directly or indirectly all or most of the students on a regular basis, such as library/[([IMC])] **media center**, auditorium, gymnasium, cafeteria or administrative offices.

"Department" means[, with regard to these enhancements,] the New Jersey Department of Education, [specifically, the] Bureau of Facility Planning Services.

...  
 "Multi-purpose" means any space that has been approved for more than one **non-simultaneous** use, including instruction[al use].

...  
 "Portable or moveable equipment" means any equipment not secured to the building such as free-standing display cases and [stuffed] **movable furniture.**

"Pre-[engineered] **manufactured, modular classroom**" means a unit which is manufactured in modular sections or in pre-cut and pre-sized components which are assembled on a school site. It is designed to be a permanent facility, [is non-relocatable] and is set upon a permanent foundation.

"Relocatable classroom" means a] **"Trailers and vans" means pre-manufactured modular [or prefabricated unit] units** which [is] **are** designed to be used at more than one location during the life of the facility. Wheels and axles are [not] a part of the [facility] **unit**, and the [facility is designed to] **unit shall not** be set upon a permanent foundation.

"Resilient floor covering" means any approvable material applied over concrete.]

"School capacity formula" means the computational formula used in computing the capacity of a school building to derive the capacity for the building as per N.J.A.C. 6:22-[2.5]**5.5(a)i and ii.**

[6:22-2.3] **6:22-5.3 Enhancements to Uniform Construction Code (U.C.C.)**

(a) Under the authority granted to it in [Chapter 496, Laws of 1983] **P.L. 1983, c.496**, the State Board of Education hereby adopts the following enhancements to the **Uniform Construction Code (U.C.C.):**

1. (No change.)  
 2. Guardrails along stair runs and landings shall be at 42 inches above the tread nosing [without exception].

3. [All] **No fuel-fired** heating appliances intended to supply domestic hot water or hot water/steam/air for space heating shall [not] be located in any [instructional room in use group E, as designated in Building Officials Code Administrators (BOCA)] **occupied space** except for industrial arts and vocational education shops and laboratories.

4. An electric solenoid key-operated gas shut-off switch shall be installed in all gas supply lines to all instructional rooms, labora-

tories, shops or other spaces where gas is used by students [in use group E].

5. An automatic fire detection system shall be installed in all new buildings, and additions or renovations to existing buildings, [of use group E (educational), as designated in the BOCA National Building Code/87-1017.3.1] in accordance with applicable National Fire Protection Association standards in effect on the date of plan submission. The system shall utilize:

i. Combination fixed-temperature and Rate of Rise device in all enclosed classrooms and other spaces not covered in (a)5ii below; ii.-iii. (No change.)

iv. A combination of the above three types of detection devices except that a fixed-temperature detector shall be permitted in approved locations, such as a boiler [room] or incinerator room.

6. Manual fire [alarm boxes] alarms, in addition to BOCA [87 1017.2] requirements as amended, shall be provided in the natural path of escape from fire, near each exterior door from the corridor, kitchen, heater room and other exterior exits that are required to serve 50 or more persons. Additional manual fire [alarm boxes] alarms shall be located in the main office, stage, at each stairway entrance from a corridor or place of assembly and [near one] at all required exterior [exit] exits in each section of a place of assembly. It shall not be necessary to traverse more than 200 feet of unobstructed horizontal distance on the same floor in order to reach a fire alarm [box].

7. Each instructional space and room of assembly which is illuminated with the use of high intensity discharge (HID) sources, such as mercury vapor, high pressure sodium and metal halide lamps, shall also be provided with a second source of illumination to provide illumination instantly upon activation of the circuit. All high intensity discharge (HID) lamps shall be of the fail-safe type which will permanently extinguish within two minutes after the outer glass of the bulb is broken. All [lamps] fixtures including fluorescents shall be provided with a glass or plastic lens to protect the [bulb] lamp.

8. All school buildings shall be equipped with a mechanical air supply and exhaust ventilation system which will provide, during periods of occupancy, standard tempered outdoor air supply and mechanical exhaust at the minimum rates set forth in the BOCA Basic National Mechanical Code [as amended] in effect on the date of plan submission.

[6:22-2.4] 6:22-5.4 Educational facility planning standards

(a) (No change.)

(b) General design and construction requirements are as follows:

1. School buildings shall afford suitable accommodations for study; class and laboratory work; library services; health and physical education; guidance and counseling; industrial, vocational and homemaking instruction when the curriculum requires it; administration; food services; health services; art and music education, when the curriculum requires it; and, all other school services generally recognized in the approval of a school.

[1.]2. (No change in text.)

[2.]3. Inner courts [used for instructional purposes] shall have a minimum width of 20 feet.

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

[4.]5. Power tools and machines in shops which generate dust shall be provided with dust-collecting equipment. Such equipment shall be either single or multi-use vacuum packs or a central dust collection system. Installed systems shall comply with National Fire Protection Association [Standard No. 91] Standards, and New Jersey Department of Environmental Protection rules (N.J.A.C. 7:27-81 [et seq.]).

[5.]6. The [average] ceiling height of an academic classroom or other instructional space containing more than 300 square feet in area shall average nine feet six inches and no part of the ceiling or other obstruction shall be lower than eight feet. Instructional spaces of less than 300 square feet and areas of larger spaces devoted to clothing alcoves, storage or work space may have ceilings eight feet in height.

[6.]7. [The ceiling height in an academic classroom shall average nine feet six inches. Minimum ceiling heights] Heights of the ceiling or other obstruction in other areas shall [be] provide a minimum clearance as listed below:

[Gymnasium (Elementary) .....	18 feet
Gymnasium (Middle) .....	20 feet]
Gymnasium [(High School)] .....	22 feet
Auxiliary Gymnasium .....	14 feet
Weight Room .....	12 feet
Music Room (Vocal and/or Instrumental) .....	12 feet
or eight feet from the highest riser to the ceiling but in no case less than nine feet six inches	
Multipurpose Room .....	18 feet
Cafeteria .....	12 feet
Industrial Arts and Vocational Shop .....	12 to 15 feet
Library/Media Center .....	9 1/2 feet

[7.]8. (No change in text.)

[8.]9. A health unit shall be provided and shall include a nurse's area, waiting area, an examination area, a rest area with privacy, drinking water and toilet facilities sized and arranged so that physically handicapped persons requiring assistance will be able to receive such aid.

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

[10.]11. Wherever chemicals are stored or used, an eyewash fountain or similar device, capable of providing a 15-minute continuous water flow, shall be provided.

i. Eyewash devices shall also be provided as per N.J.A.C. 6:3-1.14.

[11. Small group instruction areas of less than 300 square feet shall meet the following standards in addition to the U.C.C. standards:

i. No part of the ceiling shall be lower than eight feet;

ii. A number of electrical outlets sufficient to satisfy the program need, but in no case fewer than two duplex outlets, shall be provided;

iii. Concrete floors shall be covered with a resilient floor covering;]

[iv.]12. The minimum dimension of [the room] any instructional space shall be 10 feet[;].

(c) Exit requirements are as follows:

1.-2. (No change.)

3. Minimum clear widths for secondary corridors serving 50 or less occupants shall be five feet.

[3.]4. Doors from all spaces used by students and school staff, excluding lavatories, storage rooms, janitors' closets, instructional spaces under 300 gross square feet, and locker rooms, shall swing into the corridor and shall have a safety vision [strip] panel of 1/4 inch [wire glass] glazing which is not less than 100 square inches.

(d) [Environment] The environment requirement is as follows:

1. Windowless classrooms and other occupied instructional spaces (excluding gymnasiums, auditoriums and cafeterias) which do not have operable windows equal to at least four percent of the floor space [and other windowless instructional spaces] shall be air conditioned.

(e) Safety requirements are as follows:

1. [Safety glass shall be used in both interior and exterior display cases.] Glazing in fire rated assemblies shall be in accordance with BOCA. All other interior glazing shall be safety glazing.

2. (No change.)

3. The [conduit] sleeve of gas supply lines shall extend at least four inches outside and be vented above grade. Vent pipes shall terminate outside the building at a point not less than two feet measured vertically or horizontally from any window or other building opening. The outer end of vent pipes shall terminate in a weatherproof and securely fastened vent cap. Vent pipes shall terminate sufficiently above the ground to avoid being obstructed with snow and shall be secured firmly to the building. The entire installation shall be such that the gas piping can be readily replaced without damage to the building. Vents in courts shall extend at least five feet above the roof.

4. Science rooms, laboratories, shops and other instructional spaces, with the exception of home economic rooms, in which an open [burning] flame and/or the use of hazardous chemicals occurs shall be equipped with an emergency safety cold-water shower and a floor drain or a self-contained water receptacle or catch basin.

5. Materials provided at the base of playground equipment shall be of a soft composition such as sand or synthetic composition materials in order to prevent injuries to pupils/users.

6. When provided, ceiling paddle fans shall be a maximum of 18 inches from the ceiling or a minimum of eight feet above the floor and be enclosed with a metal guard.

(f) Electrical requirements are as follows:

1. Push-type emergency cut-out switches shall be provided at appropriate locations within shops to de-energize the electrical supply to **non-portable machinery and shall have a clear unobstructed access of a minimum of 36 inches**. These switches shall be provided on the basis of one for each 1,000 square feet or fraction thereof of floor area in the shop, but in no case less than two. Reset of the interrupted service shall be by a key-operated switch located within the shop. The cut-off and reset circuits shall be designed and installed to negate the possibility of the control circuit being de-energized, thereby being inoperative.

2.-3. (No change.)

4. Large group areas such as assembly rooms, auditoriums and other large group instructional spaces shall be provided with [a] convenience [outlet] **outlets** at the [probable] location of portable projectors and built-in speaker cables at the above location as well as stage and platform areas.

5. (No change.)

6. All 125 volt, single-phase, 15 and 20 amp receptacles, when installed within a six foot radius of sinks, shall have ground-fault circuit interrupter protection. This shall apply, but not be limited to, classrooms, home economics laboratories, art rooms, science laboratories, vocational education shops, industrial arts shops, photography wet areas, **lavatories, shower rooms and other wet areas**, and garages.

[7. All 125 volt, single-phase, 15 and 20 amp receptacles, when installed in lavatories and shower rooms, shall have ground-fault circuit interrupter protection.]

(g) Lighting requirements are as follows:

1. Installed artificial lighting intensity shall comply with the following minimum footcandles which shall be maintained on the task at any time:

INSTALLED LIGHTING INTENSITY

Locations	Minimum Acceptable Footcandles
Classrooms and instructional areas— [on work surface,] [S]study halls, lecture rooms, art rooms, offices, libraries, conference rooms, work rooms, shops, laboratories and secondary school cafeterias	[50]  50
Drafting, typing and sewing rooms	70
Reception rooms, gymnasiums, auditoriums, cafeterias, all-purpose rooms and swimming pools	30
Locker rooms, washrooms, toilet rooms, corridors containing lockers, stairways	10
Corridors without lockers and storerooms	5
Classrooms for the partially sighted	70

(h) Plumbing requirements are as follows:

1. The number of plumbing fixtures[,] and ventilation requirements[, capacity of a school building and the student capacity of each instructional space and core facility within a school building] shall be in conformance with the provisions of this chapter and be calculated according to N.J.A.C. 6:22-[2.5]5.5(a) and ii.

2. General pupil toilet rooms are those which are designed and labeled for pupil use, contain at least two of each required fixture and are directly accessible from a corridor or an open plan instructional space [whenever the building is occupied]. Pupils housed within an instructional space which is in excess of 300 square feet shall not be required to travel through any other space except a corridor to reach a general pupil toilet room.

3. There shall be at least one general toilet room for each sex [which contains at least two of each respective fixture] on each floor occupied by pupils or all instructional rooms shall have individual toilet rooms. Where classrooms, shops or physical education rooms

are provided with self-contained individual facilities (water closet, lavatory and drinking fountains), the pupil capacity of these rooms shall not be counted in computing the number of fixtures required in the general pupil toilet rooms.

**4. Toilet facilities for early intervention, pre-kindergarten and kindergarten classrooms shall be provided as follows:**

[4.]i. [At least one] An individual toilet room shall be provided in each [early intervention, pre-kindergarten and kindergarten] classroom and **shall** meet the following criteria:

[i.](1) (No change in text.)

[ii.](2) (No change in text.)

[iii.](3) (No change in text.)

[iv. Contain the following:]

[ (1)](4) **Pre-kindergarten and kindergarten classrooms shall contain a junior-juvenile size water closet suitable for children's use**, equipped with an open front seat with a flood rim height no greater than [10] **14 inches** from the floor, [except that this shall not be required for early intervention program facilities;] [(2)] **and a lavatory (sink) with a flood rim height no greater than 26 inches** from the floor; and [(3)](5) **Facilities for early intervention programs shall provide a diaper/clothes changing area.** [early intervention only;]

ii. **In lieu of providing an individual toilet room in each classroom as required in (h)4i above, toilet rooms may be provided adjacent to or outside the classroom if the following criteria are satisfactorily addressed:**

(1) **No child or group of children shall be left unsupervised at any time when traveling to or from the facilities. Provisions shall be made for adult supervision in a manner that will not infringe upon instructional time.**

(2) **Toilet facilities shall be readily accessible and the toilet room and signage shall be visible to a child from the classroom door.**

(3) **Toilet facilities for early intervention, pre-kindergarten pupils shall be designated for their exclusive use and shall be so identified.**

(4) **Toilet facilities shall be provided for both boys and girls and shall meet the requirements of (h)4i(4) above.**

iii. **If a school district chooses to provide toilet rooms adjacent to or outside the classroom in conformance with (h)4ii above, the chief school administrator shall certify to the county superintendent how the alternate method of compliance shall be addressed, on forms prescribed by the Commissioner. The completed form and a copy of a resolution by the school board approving the alternate method of compliance shall be submitted to the county superintendent for approval. Annually, thereafter, the chief school administrator shall resubmit the form certifying how the alternate method of compliance shall be addressed. Any changes to the approved alternate method of compliance shall be submitted to the county superintendent for approval.**

5.-8. (No change.)

9. Where showers are provided, benches shall be 30 inches apart, one shower head for each [five to six boys and three to four girls,] **10 students, with a shower head height of [five feet for girls and] six feet [for boys], and shall provide 12 square feet per shower head.**

10. (No change.)

**11. Arts and crafts classrooms shall be equipped with a water source, sink and appropriate sink trap.**

(i) Pre-manufactured educational [unit, van] **units, vans, trailers and/or other mobile [unit] units** shall comply with the following:

1. Pre-manufactured units shall be [inspected] **reviewed** and approved by the Bureau of Facility Planning Services. [and] **The local building code official shall inspect the installation and shall issue the certificate of occupancy. Pre-manufactured units shall:**

i.-ii. (No change.)

iii. Meet code requirements for educational buildings as specified in the U.C.C. and in N.J.A.C. 6:22-[2.3]5.3 and 6:22-[2.4]5.4;

iv. **If the unit is a trailer in excess of 20 feet in length, the unit shall [Have] have two means of clear and [unblocked] unobstructed egress**, if the unit is a trailer in excess of 20 feet in length,] which are remote from each other, otherwise there shall be a single means of egress;

v. Have sturdy steps **and be provided with a handrail**[, except] **and**, if the unit is to be used by a physically handicapped person, it shall be barrier free;

vi. Have electric heat which provides a temperature of 68 to 72 degrees Fahrenheit [in the most extreme cold weather];

vii. Have a ceiling height as follows: [vans or other mobile units—seven feet; trailers of not more than 150 square feet—no less than seven feet; trailers of 151 to 300 square feet—no less than seven feet, six inches; trailers in excess of 300 square feet—no less than eight feet.]

- (1) Vans and other mobile units—seven feet;
- (2) Trailers less than 150 square feet—seven feet minimum;
- (3) Trailers of 151 to 300 square feet—seven feet six inches minimum; and
- (4) Trailers in excess of 300 square feet—eight feet minimum.

viii.-xi. (No change.)  
 xii. Be provided with an electric smoke detection unit which has an audible alarm for each 900 square feet or portion thereof or for each instructional space if the trailer is divided into more than one approved instructional space; and

xiii. Be situated on an approved site[;].  
 [xiv. A maximum of 30 days shall be permitted to correct the code deficiencies listed in i through xiii above]

**2. Non-conformance to requirements (i)1i through xiii above** which are found during an evaluation of any pre-manufactured unit placed in service after June 4, 1986 or of a subsequent future inspection of a unit approved according to [these regulations] **1i through xiii above shall be corrected within 30 days of such evaluation.** Staff of the Bureau of Facility Planning Services or county offices of education may order a unit immediately abandoned if, as a result of an evaluation, it is concluded that a clear and present danger exists for students and staff. A clear and present danger shall be defined as deficiencies involving code requirements relating to construction materials, fire safety or exiting. Failure or inability to correct code deficiencies shall be cause to permanently abandon a pre-manufactured unit.

[2. Pre-manufactured units in service prior to June 4, 1986 will be evaluated by the Bureau of Facility Planning Services. If such evaluation indicates that a unit cannot meet the provisions of this section and/or the requirements of the Uniform Construction Code as summarized in specifications of the Department of Education for trailers, it shall be abandoned. If the evaluation indicates that code deficiencies can be corrected, districts will be permitted up to three years in which to correct the deficiencies. If the deficiencies are not corrected, the unit shall be abandoned.]

3. A pre-manufactured trailer unit being utilized as an emergency, temporary replacement for a regular classroom facility may be utilized for a maximum of two school years. As a pre-condition to the approval for the use of a trailer, a school district must have a plan approved by the county superintendent of schools for the provision[s] of permanent facilities, which includes an implementation schedule. A trailer utilized for the delivery of basic skills services to nonpublic school students under the Federal Education Consolidation Improvement Act, [Chapter 1, Chapters 192 and 193 L. 1977] **P.L. 1977, c.1, 192 and 193**, may be used as long as it meets the standards of this section and is evaluated and approved annually by the county superintendent of schools.

4. A self-propelled van and/or other mobile unit used for instruction shall:

- i.-iii. (No change.)
- iv. Have electric heat which provides a temperature 68 to 72 degrees Fahrenheit [in the most extreme cold weather];
- v.-vi. (No change.)
- vii. Have two means of clear and [unblocked] **unobstructed** egress which are remote from each other. If the exit is not at grade level, sturdy steps with a handrail shall be provided, [except] **and**, if the unit is to be used by a physically handicapped person, it shall be barrier free;
- viii.-xvii. (No change.)

xviii. Be furnished with wheel chocks to assure that the unit will not move in any direction when parked[; and].

[xix. A maximum of 30 days shall be permitted to correct the code deficiencies listed in i. through xviii. above]

**5. Non-conformance of code requirements (i)4i through xviii above** which [are] **is** found during an evaluation of any van and/or other mobile unit placed in service after June 4, 1986 or of a subsequent

future inspection of a van and/or other mobile unit approved according to [regulations] **this subsection shall be corrected within 30 days of such evaluation.** Staff of the Bureau of Facility Planning Services or the county superintendent may order a van and/or other mobile unit immediately abandoned if, as a result of an evaluation, it is concluded that a clear and present danger exists for students and staff. A clear and present danger shall be defined as deficiencies involving code requirements relating to construction materials, fire safety and exiting. Failure or inability to correct code deficiencies shall be cause to order a permanent abandonment of a van and/or other mobile unit.

[5]6. (No change.)

[6]7. (No change.)

**(j) All buildings and structures and parts thereof, both existing and new, shall be maintained in a safe, sanitary and energy-efficient condition. All service equipment, means of egress, devices and safeguards which are required by the State Uniform Construction Code in a building or structure or which were required by a previous statute for a building or structure, when erected, altered or repaired, shall be maintained in good working order.**

[6:22-2.5] **6:22-5.5** School space sizes and capacity

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

... ["Middle school" means a school which contains any combination of grades from five through eight in which at least two grades are organized according to a departmental structure.]

... ["Secondary school" is a school in which any combination of grades seven through 12 is contained, including vocational schools, and the organization for instruction is departmentalized.]

(b) The minimum square feet for each instructional space shall be determined by the net and gross square feet values shown below together with the definitions of net and gross square feet presented in (c) below. The capacity of a school building shall be calculated according to definitions in (a) above.

Area	Minimum Required Floor Area in Square Feet per Occupant
...	...
Multi-purpose Room	
Spectator area	3 net
Physical education-athletics	80 net
Food service	[15] 12 net
Assembly, unfixed seats	7 net
[Instructional Materials Center] <b>Library/Media Center</b>	
(No change.)	

(c)-(f) (No change.)

Note: See proposal in February 5, 1990 New Jersey Register (22 N.J.R. 277(c)).

**SUBCHAPTER [3.] 6. SUBSTANDARD SCHOOL FACILITIES**

[6:22-3.1] **6:22-6.1** Emergency provisions for accommodation of school pupils in substandard school facilities

(a) Substandard facilities shall be defined as:

1. All on-site facilities which have never received:

i. Approval of the State Board of Education as having met the requirements of this [sub]chapter, [and] the rules [under N.J.A.C. 6:22] in effect at the time the facilities were constructed[;], or the requirements of N.J.A.C. 5:23; or

ii. (No change.)

2. All off-site facilities being provided by district boards of education or approved private schools for the handicapped for use by public school pupils;

3. All facilities not planned and constructed as school buildings which are rented or leased from private owners by district boards

of education or approved private schools for the handicapped for use as school buildings by public school pupils.

[(b)] Off-site facilities, as specified in (a)2 above, may be continued in use pursuant to annual evaluation and approval by the county superintendent of schools as having met the provisions of this subchapter and the receipt of a variance from the Division of Finance, Bureau of Facility Planning Services.

(c) Privately owned facilities, as specified in (a)3 above, in use on or before September 1, 1987, may be continued in use pursuant to annual evaluation and approval by the county superintendent of schools as having met the provisions of this subchapter.]

[(d)](b) All substandard educational facilities shall be initially approved by the county superintendent of schools in which the district board of education or approved private school for the handicapped is situated, such approval to be given for a maximum period of two years [except as prescribed in (b) above]. No substandard educational facility, however, shall be approved for more than two consecutive years unless inspected by the Bureau of Facility Planning Services, Department of Education to ensure that:

1.-2. (No change.)

3. A plan has been developed by the district board of education or approved private school for the handicapped and approved by the county superintendent of schools to upgrade the facilities to standard, fully approved conditions.

[(e)](c) The Bureau of Facility Planning Services and the county superintendent of schools, when considering educational adequacy, shall apply the minimum standards of square feet per space and per pupil as contained in this chapter. In cases where a district board of education or approved private school for the handicapped feels it must have relief from the minimum square feet requirements, such relief shall be determined upon application to the county superintendent of schools. The county superintendent of schools shall make recommendations to the assistant commissioners of the Divisions of Finance and County and Regional Services who jointly may grant relief [upon consideration of educational, health and safety standards].

[(f)](d) County superintendents of schools will annually monitor the plans of district boards of education or approved private schools for the handicapped to upgrade facilities to State-approved temporary substandard and/or fully approved, standard status.

[(g)](e) District boards of education or approved private schools for the handicapped must provide funds in the next immediate annual budget to correct deficiencies about which they are notified by the Bureau of Facility Planning Services on or before October 1 annually. Failure to budget for the correction of deficiencies and to implement the corrections by the next September 1 following the October 1 notice, except as specified in [(h)] (f) below, shall result in the facility being abandoned.

[(h)](f) If a district board of education cannot afford to correct all identified deficiencies in one budget year because of the total costs associated with large numbers of substandard facilities, the district board's long-range facility plan must include a sub-plan for the correction of the deficiencies. The sub-plan must be updated annually and identify funding sources such as an annual budget or a capital improvement authorization. Inclusion of a sub-plan to correct deficiencies in substandard facilities does not relieve a district board of education from implementing the corrections in the shortest time possible nor extend the use of substandard facilities beyond five years.

[(i)](g) In making a determination upon any application for the use of emergency substandard facilities, the following factors shall be taken into account:

1. Accommodations in an existing public school:

i. Safety factors:

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

(9) Concrete floors in all instructional areas, except shops, shall be covered with a resilient floor covering[, except in shops]. Any carpeting, together with its backing or underlayment, shall have passed the flame spread requirements of 75 or less as per the American Society for Testing and Material 84-77.

ii. Ceiling height: The average ceiling height shall be at least eight feet [six inches] for instructional spaces [containing over 400 square feet of floor area].

iii. Heating and ventilation:

(1) The room shall be [uniformly] heated to a temperature as established by the local school district [of at least 68 degrees Fahrenheit that does not exceed 80 degrees Fahrenheit when occupied];

(2) (No change.)

iv. (No change.)

v. Lighting: At least 50 footcandles of uniformly distributed artificial illumination shall be provided in all instructional areas. Emergency lighting shall also be provided if the space is windowless [and exceeds 300 square feet].

vi. (No change.)

vii. Room size: Each small group instruction room shall provide at least 20 net square feet of open floor area per pupil with no dimension less than 10 feet and total space not less than 150 square feet. Boards of education shall consider the recommendations of the [School Capacity bulletin and other applicable policy documents of the] Department of Education in planning for facilities housing handicapped pupils.

viii. (No change.)

2. Emergency provisions for accommodation of school pupils in off-site, rented or leased buildings:

i. Safety factors:

(1)-(4) (No change.)

(5) Concrete floors in all instructional areas, except shops, shall be covered with a resilient floor covering[, except in shops]. Any carpeting, together with its backing or underlayment, shall have passed the flame spread requirements of 75 or less as per the American Society for Testing and Material 84-77;

(6) (No change.)

(7) An off-site, rented or leased building [which does not have a fire detection system] shall [have] be provided with an automatic and manual fire detection system which is interconnected to every space in use installed prior to occupancy by students and staff. An off-site, rented or leased building which has an existing manual fire alarm shall, by the start of its fourth year of use, be equipped with an automatic fire detection system which is interconnected to all spaces in use];

(8) Adequate and approved units of exit and exitways as required by the Uniform Construction Code shall be provided. The minimum clear width for corridors shall be 6'0". Directions for exiting the facility under emergency conditions shall be posted in every instructional room;

(9) (No change.)

ii. Ceiling height: The average ceiling height shall be at least eight feet [six inches] for instructional spaces. [containing 300 square feet of floor area.]

iii. Heating and ventilation:

(1) The room shall be [uniformly] heated to a temperature as established by the local school district [of at least 68 degrees Fahrenheit that does not exceed 80 degrees Fahrenheit when occupied];

(2) (No change.)

iv. Lighting: At least 50 footcandles of uniformly distributed artificial illumination shall be provided in all instructional areas. Emergency [light] lighting shall also be provided if the space is windowless.

v. Toilet facilities and drinking fountains:

(1) There shall be a minimum of two urinals, two water closets and two lavatories in boys' toilets and a minimum of two water closets and two lavatories in girls' toilets. Toilet facilities shall be available within a reasonable distance, not more than one floor away, and shall be equipped with an exterior operating window sash or mechanical exhaust ventilation. Toilet facilities shall be provided for students in early intervention, pre-kindergarten and kindergarten programs as per N.J.A.C. 6:22-[2.4]5.4(h)4.

(2) At least one drinking fountain for each 50 pupils shall be provided. Drinking fountains shall be provided for students in early intervention, pre-kindergarten and kindergarten programs as per N.J.A.C. 6:22-5.4(h)10.

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vi.-vii. (No change.)

viii. Room size: Each small group instructional space shall provide at least 20 net square feet of open floor area per pupil with no dimension less than 10 feet and not less than [100] 150 square feet.

ix. (No change.)

x. Other:

(1) A copy of the [Occupancy Permit] certificate of occupancy for the facility issued by the local construction official shall be on file in the Department of Education [Bureau of Facility Planning Services] and in the office of the county superintendent of schools, prior to occupancy.

(2) A copy of the annual inspection report from the local fire official and/or health official approving use of the facility shall be on file in the office of the county superintendent of schools prior to occupancy.

SUBCHAPTER [4.] 7. LONG-RANGE FACILITIES PLANS

[6:22-4.1] 6:22-7.1 Long-range facilities plans

(a) (No change.)

(b) Long-range [facility] facilities plans shall be updated every five years from the original submission date of July 1, 1985 and submitted to the county superintendent of schools.

(c) Revised [facility] facilities plans shall be submitted to the county superintendent whenever construction plans are sent to the Bureau of Facility Planning Services.

(d) (No change.)

(e) The following items need to be completed only if changes in these areas have occurred or are anticipated since the submission of a [master plan on July 1, 1979 or] long-range facilities plan on or before July 1, 1990:

1.-3. (No change.)

[(f) The format of the long-range facilities plan shall be such that it can be updated annually for local use.

(g) All floor plans and functional capacities included in the long-range facilities plan shall be shown in accordance with the most recent approval of the Department of Education. Temporary or emergency partitions shall not be shown as approved walls.]

SUBCHAPTER 8. APPEALS AND HEARING PROCESS

[6:22-1.7] 6:22-8.1 Appeals and hearing process

(a) Appeals arising from [action] decisions of the Bureau of Facility Planning Services of the Department of Education may be requested in writing, and an opportunity given for an informal hearing before the Bureau [manager] Director or other designated official. [A] Such written request for an informal hearing must be made within 30 days of [Bureau action] the receipt of the Bureau's decision.

(b) In the event of an adverse decision after such an informal hearing, appellants may request within 90 days of an informal hearing pursuant to N.J.S.A. 18A:6-9, 18A:6-24 and 18A:6-27. Such hearings will be governed by the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1:1).

[(b)](c) Requests for variances from the Department of Education requirements as specified in N.J.A.C. 6:22-[1.2]2.1, and N.J.A.C. 6:22-[2.4]5.4, N.J.A.C. 6:22-[2.5]5.5 and the State Uniform Construction Code as specified in N.J.A.C. 5:23[-1.1 et seq.] may be made in writing by the district board of education to the [manager] Director of the Bureau of Facility Planning Services. The [manager] Director may approve variances from department requirements provided the spirit and intent of the standards are observed and the need for the variances is satisfactorily documented. Variations from the State Uniform Construction Code must be acted upon in accordance with N.J.A.C. 5:23.

# RULE ADOPTIONS

## ENVIRONMENTAL PROTECTION

### (a)

#### DIVISION OF WATER RESOURCES

#### Notice of Administrative Correction

#### Water Supply Allocation Permits

#### General Water Supply Allocation Permit Application Procedures

#### Water Supply Critical Areas; General

#### N.J.A.C. 7:19-2.2 and 6.10

Take notice that the Department of Environmental Protection has discovered an error in the adopted text of N.J.A.C. 7:19-2.2, and has requested a change through administrative correction to the adopted text of N.J.A.C. 7:19-6.10, both published in the March 19, 1990 New Jersey Register at 22 N.J.R. 932(a). In N.J.A.C. 7:19-2.2(f)8, the reference to N.J.A.C. 7:19-2.16(a)10 is in error, as there is no such paragraph. The correct cite is to N.J.A.C. 7:19-2.16(a)1. The Department has requested, and the Office of Administrative Law has agreed to, a change in the description of "water supply critical areas" at N.J.A.C. 7:19-6.10(a) to conform to the definition of the term as adopted at N.J.A.C. 7:19-6.2. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rules follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

7:19-2.2 General Water Supply Allocation Permit application procedures

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

(f) In general, an applicant for a permit shall provide all information which may establish:

1.-7. (No change.)

8. If permit application is made for a period of more than those listed in N.J.A.C. 7:19-16(a)[10]1, reasons why a permit of such duration is required by economic considerations, including for example necessity of amortizing a new investment over an extended period of time, and the public interest; and

9. (No change.)

(g)-(k) (No change.)

7:19-6.10 Water supply critical areas; general

(a) Water supply critical areas are those areas in which it is [officially] determined by the Department, after public notice and a public [meeting] hearing, that adverse conditions exist, related to ground or surface water, which require special measures in order to achieve the objectives of the Act. The adverse conditions may include one or more of the following:

1.-4. (No change.)

(b)-(l) (No change.)

## HEALTH

### (b)

#### DIVISION OF HEALTH FACILITIES EVALUATION

#### Notice of Administrative Correction

#### Hospital Licensing Standards

#### Postanesthesia Care

#### Postanesthesia Care Staff Time and Availability; Mandatory

#### N.J.A.C. 8:43G-35.3

Take notice that the Department of Health has requested a change through administrative correction to the adopted text of N.J.A.C. 8:43G-35.3, published in the February 5, 1990 New Jersey Register at 22 N.J.R. 441(b). In N.J.A.C. 8:43G-35.3(a), of the minimum two health care personnel required to be present whenever a patient is in the post-

anesthesia care unit, one is required to be a registered professional nurse and the other can be, "either a licensed practical nurse or a physician." In response to a comment on the proposed rule (see first Comment/Response on N.J.A.C. 8:43G-35, 22 N.J.R. 463), the Department explained its intention for this subsection to mean that the latter health care personnel could be either, "a licensed practical nurse, a registered nurse, or a physician." As this intended meaning is not clearly stated in the adopted rule text, and because this meaning is most logical, given the purpose of the provision as expressed in the adoption notice, the Office of Administrative Law has agreed to the change requested. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface **thus**):

8:43G-35.3 Postanesthesia care staff time and availability; mandatory

(a) There shall be at least two health care personnel, one of whom is a registered professional nurse and the other of whom is either a licensed practical nurse, a **registered professional nurse**, or a physician, present whenever a patient is in the postanesthesia care unit.

(b) (No change.)

## CORRECTIONS

### (c)

#### THE COMMISSIONER

#### Manual of Standards for Juvenile Detention Facilities

#### Adopted New Rules: N.J.A.C. 10A:32

Proposed: February 5, 1990, at 22 N.J.R. 313(a).

Adopted: March 9, 1990, by William H. Fauver, Commissioner, Department of Corrections.

Filed: March 14, 1990, R.1990 d.208, **without change**.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: April 16, 1990.

Expiration Date: April 16, 1995.

Summary of Public Comments and Agency Responses:

**No comments received.**

Because N.J.A.C. 10A:32 expired on March 4, 1990, the rules herein are adopted as new rules, pursuant to N.J.A.C. 1:30-4.4(f).

Full text of the adopted new rules proposed for re-adoption can be found in the New Jersey Administrative Code at N.J.A.C. 10A:32.

### (d)

#### STATE PAROLE BOARD

#### Notice of Administrative Correction

#### Parole Board Rules

#### Re-adoption with Amendments: N.J.A.C. 10A:71

Take notice that the State Parole Board has discovered an error in the adopted text of N.J.A.C. 10A:71-3.21(b)3 as published in the March 5, 1990 New Jersey Register at 22 N.J.R. 825(a). The Board intended upon adoption of this paragraph for the text to remain unchanged from the current rule text, not adopting the proposed change. As set forth in a notice of administrative correction published in the December 4, 1989 New Jersey Register at 21 N.J.R. 3777(b), the text of this paragraph then in the New Jersey Administrative Code was not correct, since the term "10 additional months" should be "16 additional months." It was the Board's express intent that this correct text of the paragraph be shown as the adopted text in the notice of adoption. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

## CORRECTIONS

10A:71-3.21 Board panel action; schedule of future parole eligibility dates for adult inmates

(a) (No change.)

(b) Upon determining to deny parole to a young adult inmate, a two-member young adult Board parole panel shall, based upon the following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

1.-2. (No change.)

3. Except as provided herein, a young adult inmate serving a sentence for a crime contained in Category D of N.J.A.C. 10A:71-3.3 shall serve [10] 16 additional months.

4.-6. (No change.)

(c)-(i) (No change.)

## INSURANCE

### (a)

#### DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

##### Notice of Administrative Correction Formation of a Domestic Property and Casualty Insurance Corporation (Stock or Mutual) or Reciprocal Insurance Exchange

##### Notice of Adoption: Summary of Public Comments and Agency Responses

##### Adopted New Rules: N.J.A.C. 11:1-28

Take notice that the Department of Insurance has discovered errors in the text of the Summary of Public Comments and Agency Responses published in the Notice of Adoption for new rules N.J.A.C. 11:1-28 appearing in the March 19, 1990 New Jersey Register at 22 N.J.R. 954(a). These errors are such that the Department believes their express correction is necessary to clarify the Summary.

The first error appears in the eighth Comment and Response pair at 22 N.J.R. 956. The Response should read as follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

RESPONSE: The Department agrees. The complete ownership chart requirement applies to the attorney in fact and not to the reciprocal.

For [instance] **insurers**, a complete ownership chart must be in the format of Schedule Y—Organization Chart of the Annual Statement. For reciprocals, it must show the interrelationship between the parent and all affiliates engaging in the business of insurance and illustrate the relationship to the parent and all intermediate parent(s) having control of the attorney in fact.

The second error is in the fourth Comment and Response pair at 22 N.J.R. 957. The Comment should read as follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

COMMENT: The commenter stated that proposed N.J.A.C. 11:1-29.9]28.9 and the "four-tiered" application process appear to eliminate the initial step of "permission to solicit" and therefore contradicts N.J.S.A. 17:50-1 et seq. without statutory authority.

### (b)

#### DIVISION OF ACTUARIAL SERVICES

##### Medicare Supplement Minimum Standards Transition Rule for 1990

##### Adopted New Rules: N.J.A.C. 11:4-25

Proposed: February 5, 1990 at 22 N.J.R. 320(a).

Adopted: March 23, 1990 by Jasper J. Jackson, Acting  
Commissioner, Department of Insurance.

Filed: March 23, 1990 as R.1990 d.214, with substantive and technical changes not requiring additional public notice and comments (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:35C-1 et seq.,  
17B:26A-1 et seq.

Effective Date: April 16, 1990.

Expiration Date: December 2, 1990.

(CITE 22 N.J.R. 1266)

## ADOPTIONS

### Summary of Public Comments and Agency Responses:

No comments received.

### Summary of Agency Initiated Changes:

The transition rules contain citations to a proposed rule amendment which was withdrawn subsequent to proposal of these rules. The information contained in the withdrawn amendment proposal remains an integral component of these transition rules. The transition rules are being amended upon adoption to incorporate the withdrawn information or to cite an equivalent current rule as reference.

N.J.A.C. 11:4-25.8 addresses the filing requirements for advertising and currently references N.J.A.C. 11:4-23.14 which was part of PRN 1989-495, appearing at 21 N.J.R. 2877(a), and has since been withdrawn by a reproposal at 22 N.J.R. 771(a). The requirements of N.J.A.C. 11:4-23.14 are now being stated within N.J.A.C. 11:4-25.8.

N.J.A.C. 11:4-25.9 concerns distribution of an informational brochure by insurers to applicants/insureds. This rule currently references N.J.A.C. 11:4-23.12. The information contained in N.J.A.C. 11:4-23.12 is not eliminated by the withdrawal of PRN 1989-495, but is merely numbered differently within the rules which were to be amended. The repropoed rule amendment maintains the currently adopted codification of cited subchapter 23. Thus, N.J.A.C. 11:4-23.12 is amended to read as N.J.A.C. 11:23.8.

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

#### SUBCHAPTER 25. MEDICARE SUPPLEMENT MINIMUM STANDARDS TRANSITION RULE FOR 1990

##### 11:4-25.1 Purpose

The purpose of this subchapter is to assure the orderly implementation and conversion of Medicare supplement insurance benefits and premiums due to changes in the Federal Medicare program; to provide for the reasonable standardization of the coverage, terms and benefits of Medicare supplement policies or contracts; to facilitate public understanding of such policies or contracts; to eliminate provisions contained in such policies or contracts which may be misleading or confusing in connection with the purchase of such policies or contracts; to eliminate policy or contract provisions which may duplicate Medicare benefits; to provide for adjustment of required minimum benefits for Medicare supplement policies; to provide notice to former policyholders of an offer to reinstate coverage; to provide full disclosure of policy or contract benefits and benefit changes; and to provide for appropriate premium adjustments.

##### 11:4-25.2 Applicability and scope

(a) This subchapter shall take precedence over other rules and requirements relating to Medicare supplement policies or contracts to the extent necessary to assure that benefits are not duplicated and to adjust minimum required benefits to changes in Medicare benefits, that applicants receive adequate notice and disclosure of changes in Medicare supplement policies and contracts, that appropriate premium adjustments are made in a timely manner, and that premiums are reasonable in relation to benefits.

(b) Except as provided in N.J.A.C. 11:4-25.4, this subchapter shall apply to:

1. All Medicare supplement policies and contracts delivered, or issued for delivery, or which are otherwise subject to the jurisdiction of this State on or after \*[the effective date hereof]\* \*April 16, 1990\*; and

2. All certificates issued under group Medicare supplement policies as provided in (b)1 above.

##### 11:4-25.3 Definitions

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

"Applicant" means:

1. In the case of an individual Medicare supplement policy or contract, the person who seeks to contract for insurance benefits; and

## ADOPTIONS

2. In the case of a group Medicare supplement policy or contract, the proposed certificate holder.

"Certificate" means any certificate issued under a group Medicare supplement policy.

"Medicare supplement policy" means a group or individual health insurance policy or any other contract which is advertised, marketed or designed primarily to provide health care benefits as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare by reason of age.

### 11:4-25.4 Benefit conversion requirements

(a) Effective January 1, 1990, no Medicare supplement insurance policy, contract or certificate in force in this State shall contain benefits which duplicate benefits provided by Medicare.

(b) Benefits eliminated by operation of the Medicare Catastrophic Coverage Act of 1988 transition provisions shall be restored.

(c) For Medicare supplement policies subject to the minimum standards adopted by this State pursuant to the Medicare Catastrophic Coverage Act of 1988, set out at N.J.A.C. 11:4-16.6(j)1 and 2, and at N.J.A.C. 11:4-23.6(c), the minimum benefits shall be:

1. Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

2. Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

3. Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

4. Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

5. Coverage under Part A for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under Federal regulations) unless replaced in accordance with Federal regulations or already paid for under Part B;

6. Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible;

7. Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under Federal regulations), unless replaced in accordance with Federal regulations or already paid under Part A, subject to the Medicare deductible amount; and

8. Effective January 1, 1990, coverage for the coinsurance amount of Medicare eligible expenses for covered outpatient drugs used in immunosuppressive therapy subject to the Medicare deductible amount.

(d) No later than January 31, 1990, every insurer, health care service plan or other entity providing Medicare supplement insurance or benefits to a resident of this State shall notify its policyholders, contract holders and certificate holders of modifications it has made to Medicare supplement insurance policies or contracts. Such notice shall be in the format of Appendix A of this subchapter, incorporated herein by reference.

1. Such notice shall include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement insurance policy or contract.

2. The notice shall inform each covered person as to when any premium adjustment due to changes in Medicare benefits will be effective.

3. The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

4. Such notice shall not contain or be accompanied by any solicitation.

(e) No modifications to an existing Medicare supplement contract or policy shall be made at the time of or in connection with the notice

## INSURANCE

requirements of this subchapter except to the extent necessary to accomplish the purposes articulated in N.J.A.C. 11:4-25.1.

### 11:4-25.5 Form and rate filing requirements

(a) As soon as practicable, but no later than 45 days after the effective date of the Medicare benefit changes, every insurer, health care service plan or other entity providing Medicare supplement insurance or contracts in this State shall file with the Department, in accordance with the applicable filing procedures of this State:

1. Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable policies or contracts with supporting documents as necessary to justify the adjustment; and

2. Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement insurance modifications necessary to eliminate benefit duplications with Medicare and to provide the benefits required by N.J.A.C. 11:4-25.4. Any such riders, endorsements or policy forms shall result in a clear description of the Medicare supplement benefits provided by the policy or contract.

(b) Upon satisfying the filing requirements of this State, every insurer, health care service plan or other entity providing Medicare supplement insurance in this State shall provide each covered person with any rider, endorsement or policy form necessary to make the adjustments outlined in N.J.A.C. 11:4-25.4.

(c) Any premium adjustments shall produce an expected loss ratio under such policy or contract as will conform with minimum loss ratio standards for Medicare supplement policies and shall result in an expected loss ratio at least as great as that originally anticipated by the insurer, health care service plan or other entity for such Medicare supplement insurance policies or contracts. Premium adjustments may be calculated for the period commencing with Medicare benefit changes.

### 11:4-25.6 Offer of reinstatement of coverage

(a) Except as provided in (b) below, in the case of an individual who had in effect, as of December 31, 1988, a Medicare supplement policy with an insurer (as a policyholder or, in the case of a group policy, as a certificate holder) and the individual terminated coverage under such policy on or before December 13, 1989, the insurer shall:

1. Provide written notice no earlier than December 15, 1989, and no later than January 30, 1990, to the policyholder or certificate holder (at the most recent available address) of the offer described below; and

2. Offer the individual, during a period of at least 60 days, beginning not later than February 1, 1990, reinstatement of coverage which shall be effective as of January 1, 1990, under terms which:

i. Do not provide for any waiting period with respect to the treatment of pre-existing conditions;

ii. Provide for coverage substantially equivalent to coverage in effect before the date of such termination; and

iii. Provide for classification of premiums on terms which are at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage never terminated.

(b) An insurer is not required to make the offer set out in (a)2 above in the case of an individual who is a policyholder or certificate holder of another Medicare supplemental policy as of January 1, 1990, if the individual is not subject to a waiting period with respect to treatment of a pre-existing condition under such other policy.

### 11:4-25.7 Requirements for new policies and certificates

(a) Effective January 1, 1990, no Medicare supplement insurance policy, contract or certificate shall be delivered or issued for delivery in this State which provides benefits which duplicate benefits provided by Medicare. No such policy, contract or certificate shall provide less benefits than those required under N.J.A.C. 11:4-25.4.

(b) The filing required under N.J.A.C. 11:4-25.5(a)1 shall provide for loss ratios which are in compliance with all minimum standards.

(c) Every applicant for a Medicare supplement insurance policy, contract or certificate shall be provided with an outline of coverage which simplifies and accurately describes benefits provided by Medicare and policy or contract benefits along with benefit limitations.

**INSURANCE**

**ADOPTIONS**

**11:4-25.8 Filing requirements for advertising**

**\*(a)\*** Every insurer, health care service plan or other entity providing Medicare supplement insurance or benefits in this State shall **\*[provide]\* \*file with the Commissioner\*** a copy of **\*[any]\* \*all\*** advertisements **\*to which residents of this State will have access, and through which the insurer intends, or by implication purports to the reasonable targeted consumer its intent, to make its Medicare supplement insurance or benefits available for purchase\* \*[intended for use]\*** in this State whether through written, radio or television **\*or other electronic media, at least 30 days prior to the date on which the advertisement is to be used in this State, or made accessible to residents of this State\* \*[medium to the Commissioner of Insurance of this State for review in accordance with N.J.A.C. 11:4-23.14. Such advertisement shall comply with all applicable laws of this State]\*.**

**\*(b) All advertisements shall be in accord with the standards set out in N.J.A.C. 11:2-11 and all other disclosure and advertising rules which may be applicable to insurers.**

**(c) The Commissioner may disapprove an advertisement at any time if the advertisement is not in compliance with this rule or is in violation of the Trade Practices Act, N.J.S.A. 17B:30-1 et seq. An advertisement which has been disapproved by the Commissioner shall continue to be disapproved until disapproval is withdrawn by the Commissioner.**

**(d) The Commissioner may institute any and all procedures and penalties available pursuant to the Medicare Supplement Acts of this State and the Trade Practices Act, N.J.S.A. 17B:30-1 et seq., against an insurer who is determined by the Commissioner to be in violation of this rule.**

**(e) All actions of the Commissioner are subject to review pursuant to the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.\***

**11:4-25.9 Buyer's guide**

No insurer, health care service plan or other entity shall make use of or otherwise disseminate any buyer's guide or informational brochure which does not accurately outline current Medicare benefits and which has not been adopted in accordance with N.J.A.C. 11:4-**\*[23.12]\* \*23.8\*** by the Commissioner of Insurance.

**11:4-25.10 Separability**

If any provision of this subchapter or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

**APPENDIX A**

**(COMPANY NAME)**

**NOTICE OF CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT COVERAGE—1990**

**THE FOLLOWING OUTLINE BRIEFLY DESCRIBES THE MODIFICATIONS IN MEDICARE AND IN YOUR MEDICARE SUPPLEMENT COVERAGE. PLEASE READ THIS CAREFULLY!**

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Calendar Year	Effective January 1, 1990, Medicare Will Pay	Your Coverage Now Pays Per Calendar Year	Effective January 1, 1990 Your Coverage Will Pay Per Calendar Year
<b>MEDICARE PART A SERVICES AND SUPPLIES</b>				
Inpatient Hospital Services	Unlimited number of hospital days after \$560 deductible	All but \$592 for first 60 days/benefit period		
Semi-Private Room & Board		All but \$148 a day for 61st-90th days/benefit period		
Misc. Hospital Services & Supplies, such as Drugs, X-Rays, Lab Tests & Operating Room		All but \$296 a day for 91st-150th days (if individual chooses to use 60 nonrenewable lifetime reserve days)		
<b>BLOOD</b>	Pays all costs except payment of deductible (equal to costs for first 3 pints) each calendar year. Part A blood deductible reduced to the extent paid under Part B	Pays all costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period		
<b>SKILLED NURSING FACILITY CARE</b>	There is no prior confinement requirement for this benefit	100% of costs for 1st 20 days (after a 3-day prior hospital confinement)/benefit period		
	First 8 days— All but \$25.50 a day	All but \$74.00 a day for 21st-100th days/benefit period		
	9th through 150th day— 100% of costs	Beyond 100 days— Nothing/benefit period		
	Beyond 150 days— Nothing			

**ADOPTIONS**

**LABOR**

MEDICARE PART B SERVICES AND SUPPLIES	80% of allowable charges (after \$75 deductible)	80% of allowable charges (after \$75 deductible/ calendar year)
PRESCRIPTION DRUGS	Inpatient prescription drugs. 80% of allowable charges for immunosuppressive drugs during the first year following a covered transplant (after \$75 deductible/calendar year)	Inpatient prescription drugs. 80% of allowable charges for immunosuppressive drugs during the first year following a covered transplant (after \$75 deductible/calendar year)
BLOOD	80% of all costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period (after \$75 deductible/ calendar year)	80% of costs except nonreplacement fees-(blood deductible) for first 3 pints in each benefit period (after \$75 deductible/ calendar year)

THIS CHART SUMMARIZING THE CHANGES IN YOUR MEDICARE BENEFITS AND IN YOUR MEDICARE SUPPLEMENT PROVIDED BY ONLY BRIEFLY DESCRIBES SUCH BENEFITS. FOR INFORMATION ON YOUR MEDICARE BENEFITS CONTACT YOUR SOCIAL SECURITY OFFICE OR THE HEALTH CARE FINANCING ADMINISTRATION. FOR INFORMATION ON YOUR MEDICARE SUPPLEMENT CONTACT:

**LABOR**

**(a)**

**OFFICE OF THE CONTROLLER**

**Contributions, Records and Reports**

**Readoption with Amendments: N.J.A.C. 12:16**

Proposed: February 20, 1990 at 22 N.J.R. 603(b).  
 Adopted: March 23, 1990 by Raymond L. Bramucci,  
 Commissioner, Department of Labor.  
 Filed: March 23, 1990 as R.1990 d.217, **with a substantive change**  
 not requiring additional public notice and comment (See  
 N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), and 43:21-1 et seq.,  
 specifically 43:21-11.

Effective Date: March 23, 1990, Readoption;  
 April 16, 1990, Amendments.

Expiration Date: March 23, 1995.

**Summary of Public Comments and Agency Responses:**

The Department did not receive any public comments on the proposed readoption. However, N.J.A.C. 12:16-4.3(b) is being changed upon adoption to reflect a recent change in the Federal Unemployment Tax Act (FUTA). Specifically, FUTA has continued employer provided group legal services as an exemption, pursuant to Section 120 of the Internal Revenue Code. Therefore, the Department is deleting Section 120 benefits from the list of items considered as fringe benefits to assure that the State continues to be in conformance with FUTA.

**Full text** of the adoption appears in the New Jersey Administrative Code at N.J.A.C. 12:16.

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

12:16-4.1 Remuneration defined

(a) (No change.)

(b) The following remuneration issues are discussed in N.J.A.C.

12:16-4.2 through 4.14:

1.-9. (No change.)

10. Personal use of a company vehicle;

11. Dependent care assistance programs;

12. Interest on below-market interest rate loans; and

13. Section 125 Cafeteria plans.

12:16-4.3 Fringe benefit payments

(a) (No change.)

(b) Taxable fringe benefits may include:

1.-7. (No change.)

8. Wages paid after death to either the estate or beneficiaries within the same calendar year as the death;

9. Moving expense payments to the employee to the extent the payments exceed actual employee expenses; **\*and\***

**\*[10. The value of benefits received or amounts reimbursed under a legal services plan qualified under Section 120 of the Internal Revenue Code; and]\***

**\*[11.]\*\*10.\*** Expense allowances for which no accounting is made to the employer.

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

12:16-4.11 Personal use of a company vehicle

(a) The personal use of a company vehicle shall be taxable remuneration.

1. Such personal use shall be valued pursuant to Section 61 of the Internal Revenue Code.

(b) If personal use is present (except for de minimis usage such as a lunch stop during company business), and such personal use has not been properly reported, the personal use shall be valued at the highest manner available.

12:16-4.12 Dependent care assistance programs

(a) Employer contributions on behalf of, or reimbursements to, an employee under a Dependent Care Assistance Program (Section 129 of the Internal Revenue Code) shall be taxable remuneration.

(b) If a Dependent Care Assistance Program is financed by an employee voluntary salary reduction, the amount of remuneration received under the program shall be determined as that amount which the employee could have elected to receive in lieu of making the contribution.

12:16-4.13 Interest on a below-market interest rate loan

The amount of remuneration generated by a below-market interest rate loan shall be the same amount as that computed for purposes of F.U.T.A.

12:16-4.14 Section 125 cafeteria plans

Employer contributions to a cafeteria plan arrangement pursuant to Section 125 of the Internal Revenue Code (1986) shall be taxable remuneration to the extent that the employee could have elected to receive cash in lieu of making the contribution.

12:16-13.10 Withdrawal to inactive status

(a) An employer who is not eligible for termination of coverage pursuant to N.J.S.A. 43:21-8 may have his or her account withdrawn to an inactive status upon written application to the controller.

1. The inactivity date shall not be earlier than the last day of the preceding calendar quarter.

**(a)**

**DIVISION OF WORKPLACE STANDARDS  
OFFICE OF WAGE AND HOUR COMPLIANCE  
Payroll Deductions for Mass Transportation**

**Adopted New Rules: N.J.A.C. 12:56-16**

Proposed: January 16, 1990 at 22 N.J.R. 148(a).

Adopted: March 23, 1990 by Raymond L. Brammuci,  
Commissioner, Department of Labor.

Filed: March 23, 1990 as R.1990 d.215, **without change**.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 34:11-4.4b(8).

Effective Date: April 16, 1990.

Expiration Date: September 26, 1990.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text of the adoption follows.**

**SUBCHAPTER 16. PAYROLL DEDUCTIONS FOR MASS  
TRANSPORTATION**

**12:56-16.1 Purpose and scope**

(a) This subchapter sets forth the type of deduction that the Commissioner deems to be proper and in keeping with the intent and purpose of the New Jersey Wage Payment Law, N.J.S.A. 34:11-4.1 et seq.

(b) This subchapter applies to every employer employing any person in this State.

**12:56-16.2 Definitions**

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

"Commissioner" means the Commissioner of the Department of Labor.

"Employee" means any person suffered or permitted to work by an employer, except that independent contractors and subcontractors shall not be considered employees.

"Employer" means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, the trustee or successor of any of the same, employing any person in this State.

"Mass transportation" means railroads operated by steam, electricity or other power, rapid transit lines and buses, or ferries.

**12:56-16.3 Payroll deductions for mass transportation commuter tickets**

(a) Each employer may use a payroll deduction as a means of providing mass transportation commuter tickets only if the payroll deduction has been authorized by the employee in writing or in a collective bargaining agreement.

(b) Each employer that uses a payroll deduction as set forth in (a) above shall make this method of payment for mass transportation commuter tickets available to all of its employees.

**(b)**

**DIVISION OF WORKPLACE STANDARDS  
Safety and Health Standards for Public Employees  
Excavations**

**Adopted Amendment: N.J.A.C. 12:100-5.2**

Proposed: February 20, 1990 at 22 N.J.R. 607(a).

Adopted: March 23, 1990 by Raymond L. Brammuci,  
Commissioner, Department of Labor.

Filed: March 23, 1990 as R.1990 d.216, **without change**.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:6A-25 et seq.,  
specifically 34:6A-30.

Effective Date: April 16, 1990.

Expiration Date: September 22, 1994.

(CITE 22 N.J.R. 1270)

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text of the adoption follows:**

12:100-5.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1926, Construction Industry Standards with the amendments published in the Federal Register through October 31, 1989, are adopted as occupational safety and health standards for the protection of public employees engaged in construction operations and shall include:

1.-13. (No change.)

14. Subpart P—Excavations.

15. (No change.)

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

**LAW AND PUBLIC SAFETY****(c)**

**DIVISION OF MOTOR VEHICLES**

**Motorized Bicycles**

**Readoption: N.J.A.C. 13:25**

**Adopted Repeal: N.J.A.C. 13:25-7.1**

Proposed: February 5, 1990 at 22 N.J.R. 323(a).

Adopted: March 14, 1990 by Col. Clinton L. Pagano, Director,  
Division of Motor Vehicles.

Filed: March 16, 1990 as R.1990 d.210, **without change**.

Authority: N.J.S.A. 39:2-3, 39:4-14.3, 39:4-14.3a et seq. and  
39:4-14.3g.

Effective Date: March 16, 1990, Readoption; April 16, 1990,  
Repeal.

Expiration Date: March 16, 1995.

**Summary of Public Comments and Agency Responses:**

Opportunity to be heard with regard to the proposal was invited via notice published in the New Jersey Register at 22 N.J.R. 323(a). A media advisory was also prepared by the Division of Motor Vehicles with regard to the proposal. The period for public comment was extended by the February 9, 1990 media advisory until March 11, 1990. **No comments were received** from the public with regard to the proposal.

13:25-7.1 (Reserved)

**TRANSPORTATION****(d)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL  
AID**

**BUREAU OF TRAFFIC ENGINEERING AND SAFETY  
PROGRAMS**

**Speed Limits for State Highways**

**Routes N.J. 157 in Atlantic County and N.J. 82 in  
Union County**

**Adopted Amendments: N.J.A.C. 16:28-1.99 and 1.108**

Proposed: February 5, 1990 at 22 N.J.R. 328(a).

Adopted: March 8, 1990 by John F. Dunn Jr., Director, Division  
of Traffic Engineering and Local Aid.

Filed: March 13, 1990 as R.1990 d.207, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: April 16, 1990.

Expiration Date: June 1, 1993.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text of the adoption follows:**

## ADOPTIONS

16:28-1.99 Route N.J. 157

(a) The rate of speed designated for the certain parts of State highway Route 157 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In the City of Absecon, Atlantic County:

(1) Zone 1: 35 mph between Route U.S. 30 and East Faunce Landing Road (mileposts 0.00 to 0.45); thence

(2) Zone 2: 45 mph between East Faunce Landing Road and Route U.S. 9 (mileposts 0.45 to 0.91).

16:28-1.108 Route 82

(a) The rate of speed designated for the certain parts of State highway Route 82 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Springfield Township, Union County:

(1) 35 mph between Meisel Avenue and the Springfield Township—Union Township Corporate Line (mileposts 0.00 to 0.45).

ii. In Union Township, Union County:

(1) Zone 1: 35 mph between the Springfield Township Corporate Line and Liberty Avenue (Co. Rd. 637); (mileposts 0.45 to 0.80); thence

(2) Zone 2: 30 mph between Liberty Avenue and Coolidge Avenue (mileposts 0.80 to 2.60); thence

(3) Zone 3: 40 mph between Coolidge Avenue and Route N.J. 439 except for 25 mph when passing through the Holy Spirit Roman Catholic School Zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (mileposts 2.60 to 4.93).

(a)

### DIVISION OF PROJECT PLANNING AND DEVELOPMENT

#### Bureau of Project Location Route Location Approval

##### Adopted Repeal: N.J.A.C. 16:48

Proposed: February 20, 1990 at 22 N.J.R. 621(b).

Adopted: March 21, 1990 by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Filed: March 22, 1990 as R.1990 d.212, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 52:14B-4.

Effective Date: April 16, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

## OTHER AGENCIES

(b)

### NEW JERSEY SPORTS AND EXPOSITION AUTHORITY

#### Possession of Firearms

##### Adopted Amendment: N.J.A.C. 19:20-2.2

Proposed: February 5, 1990 at 22 N.J.R. 330(b).

Adopted: March 16, 1990 by the New Jersey Sports and Exposition Authority, Robert E. Mulcahy, III, President.

Filed: March 22, 1990 as R.1990 d.211, **without change**.

Authority: N.J.S.A. 5:10-5(1).

Effective Date: April 16, 1990.

Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

## OTHER AGENCIES

19:20-2.2 Possession of firearms

(a) The possession, use, display or discharge of any firearm or firearms, or other weapon or weapons or fireworks of any type, except by persons authorized by the New Jersey Sports and Exposition Authority is prohibited on any property owned or maintained by the Authority (including, but not limited to, parking areas and all facilities of the Authority open to the public). Persons authorized by the Authority to possess a firearm or firearms, or other weapon or weapons, under this subsection may include duly appointed law enforcement officers of this State (including political subdivisions thereof), of the government of the United States, or of another state (including political subdivisions thereof), who are present on Authority property on official business in their official capacity on behalf of their appointing authority or jurisdiction. Such law enforcement officers who are carrying a weapon, whether or not in uniform, are required to report their status as law enforcement officers and their presence on Authority property to the Authority and the Division of State Police through an appropriate supervisor or upon their entry on any property owned or maintained by the Authority.

(b) Law enforcement officers either on-duty or off-duty who are in the possession of a firearm or firearms, or other weapon or weapons, and who are not authorized under the provisions of (a) above to possess, use, display or discharge any firearm or firearms, or other weapon or weapons or fireworks, shall report that they are carrying a weapon to the Authority and the Division of State Police upon their entry on any property owned or maintained by the Authority and shall personally deposit any and all firearms or weapons in a secure depository under the supervision of the Division of State Police. The deposit of a firearm by a law enforcement officer under this subsection shall not be construed to be a transfer of a firearm in contravention of N.J.S.A. 2C:39-1 et seq. or 2C:58-1 et seq.

(c) The Authority shall provide for an appropriate procedure for the depositing and the reclaiming of a firearm or weapon which shall include appropriate methods of identification in consultation with the Superintendent of State Police.

(c)

### CASINO CONTROL COMMISSION

#### Applications

#### Employee Licenses

#### Obligation to Pick Up Renewed License Credentials

##### Adopted Amendment: N.J.A.C. 19:41-1.3

Proposed: January 2, 1990 at 22 N.J.R. 22(b).

Adopted: March 14, 1990 by Casino Control Commission, Valerie H. Armstrong, Acting Chair.

Filed: March 15, 1990 as R.1990 d.209, **without change**.

Authority: N.J.S.A. 5:12-7, 8, 9, 69(a), 70(c), 89, 90, 91 and 95.

Effective Date: April 16, 1990.

Operative Date: June 18, 1990.

Expiration Date: May 12, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Harrah's Marina, a casino licensee, submitted a comment in support of the amendment stating that they would help to eliminate the problem of employees using and displaying license credentials which have expired. However, Harrah's Marina also expressed concern that employees have grown accustomed to the existing practice which permits them to continue working with the expired credentials even where a new credential has been prepared and is available. Harrah's Marina has therefore requested a delay in the effective date of the amendment to permit employees to become familiar with the new requirement so that they do not become ineligible to work because of an inadvertent failure to pick up their new credentials.

RESPONSE: The Commission agrees with the comments of Harrah's Marina. In order to permit employees to become fully informed concerning the new procedures, the Commission has established an operative date for the amendment which is more than 60 days after the amendment would otherwise become effective.

**COMMENT:** Caesar's Atlantic City (Caesar's), also a casino licensee, submitted a comment agreeing with the amendment, with certain exceptions. Caesar's states that the rule should make provision for employees who are not home to receive the notice of renewal (either because they are away on vacation or in the hospital), and those who are not physically able to pick up their credentials within the required time for some reason. Caesar's also requests that employees be given 45 days from the time of actual receipt of the notice to pick up their credentials.

**RESPONSE:** The Commission's rules already include a notice provision which establishes that notices shall be deemed to be served upon their deposit, postage prepaid, in the United States mail (N.J.A.C. 19:40-3.3(c)). This rule avoids the administrative costs and problems of determining when notice was actually received by a person. The Commission can discern no compelling reason to create an exception from this general provision for notices of the renewal of employee licenses.

In addition, where an employee is on vacation or hospitalized, that employee will obviously not be working in the licensed position during such periods. He or she can simply pick up the credentials upon his or her return or recuperation before resuming work in the licensed position.

Finally, the Commission believes that 30 days are more than sufficient for an employee to pick up his or her credentials. In any event, even where an employee fails to do so, he or she can return to work immediately upon picking up the credentials at a later time. Thus, the Commission has determined that the changes requested by Caesar's are unnecessary.

Full text of the adoption follows:

#### 19:41-1.3 Employee licenses

(a) No natural person shall be employed in the operation of a licensed casino in a supervisory capacity or be empowered to make discretionary decisions which regulate casino operation or the management of an approved hotel unless he or she is over 18 years of age and holds a current and valid casino key employee license authorizing employment in the particular position. The following positions, without limitation, shall require a casino key employee license:

1. Pit bosses;
2. Shift bosses;
3. Credit executives;
4. Casino cashier supervisors;
- 5.-10. (No change.)

11. Any other employee of a casino licensee so designated by the Commission for reasons consistent with the policies of the Act.

(b) No natural person shall be employed in the operation of a licensed casino or in a position whose employment duties require or authorize access to restricted casino areas unless he or she is over 18 years of age and holds a current and valid casino employee license authorizing employment in the particular position. The following positions, without limitation, shall require a casino employee license:

1. Boxpersons;
2. Dealers;
3. Croupiers;
4. Floorpersons;
5. Waiters and waitresses who access restricted casino areas;
6. Any natural person employed by a casino or its agent to provide physical security in a casino hotel; and
7. Any employee whatsoever of a casino licensee so designated by the Commission.

(c) No natural person shall be employed to perform services or duties in the conduct of the business of an approved hotel which are not included within the definition of casino employee or casino key employee unless he or she holds a current and valid casino hotel employee registration. The following positions, without limitation, require a casino hotel employee registration:

- 1.-6. (No change.)

(d) (No change.)

(e) No casino licensee shall permit any casino key employee or casino employee, except those approved by the Chairman, to work in the casino area without the wearing of their license credential as required herein.

(f) Each casino licensee shall provide each such employee with a holder for the Commission license credential which shall contain the name of the casino hotel complex, shall be numerically controlled and shall permit the prominent display of the information contained

on the license credential. Thirty days prior to the use of any such holder, a casino licensee shall submit a prototype to the Commission along with a narrative description of the proposed manner in which employees will be required to wear such holder.

(g) (No change.)

(h) The Commission shall notify an applicant for renewal of an employee license in writing when a renewal application is granted and the applicant shall appear in person at the Commission's Casino Employee License Information Unit in Atlantic City within 30 days of the notice to obtain his or her new license credential. Should the applicant fail to appear as required by this subsection, the Commission shall notify casino licensees that the applicant can no longer be employed in the licensed position after the expiration date of the applicant's current license credential until the applicant appears as required and receives his or her new license credential.

(a)

### CASINO CONTROL COMMISSION

#### Equal Employment Opportunity Affirmative Action

#### Requirements for Applicants and Licensees

#### Adopted Amendment: N.J.A.C. 19:53-1.5

Proposed: February 5, 1990 at 22 N.J.R. 332(a).

Adopted: March 22, 1990 by Casino Control Commission,  
Valerie H. Armstrong, Acting Chair.

Filed: March 23, 1990 as R.1990 d.213, **without change**.

Authority: N.J.S.A. 5:12-63(c), 5:12-69 and 5:12-134.

Effective Date: April 16, 1990.

Expiration Date: April 28, 1993.

#### Summary of Public Comments and Agency Responses:

The adopted amendment to N.J.A.C. 19:53-1.5(a)8 was originally proposed by the Commission on February 5, 1990, at 22 N.J.R. 332(a). Numerous comments were submitted as a result of that proposal, both for and against. The Commission's review of these comments as well as its own review of the proposed amendment led to the current adoption of the amendment by the Commission.

Comments in favor of the amendment were received from the Casino Association of New Jersey (CANJ); the Merchants' Association in Pleasantville, New Jersey; Lifestage Consultants; the Taj Mahal Casino; Trump Castle Hotel and Casino; Harrahs; Trump Plaza; Showboat; the Sands; Adamar of New Jersey, Inc. t/a TropWorld; Boardwalk Regency Corporation (BRC) and the Claridge. Comments in opposition to the amendment were received from the Division of Gaming Enforcement (Division); the Department of Personnel of the State of New Jersey; Atlantic County; Ana Cintron; the New Jersey Division on Civil Rights; the New Jersey Federation of Democratic Women; the South Jersey Lawyers' Association; the Test City Child Care Center, Inc.; the Mainland Branch of the National Association for the Advancement of Colored People (NAACP) and the Atlantic City Branch of the NAACP; Tropicana Federated Charity Club, Inc.; the South Jersey Chapter of the National Conference of Christians and Jews and the Community Health Law Project. A summary of the comments received and the Commission's response follows.

**COMMENT:** CANJ and the individual casinos which submitted comments were uniformly in favor of the amendment. Adamar, which originally proposed the amendment, asserted that the previous version of the regulation stifled new and innovative employment practices. It was emphasized that no one had actually asserted that the process which Adamar desired to use at TropWorld, and which was the reason why Adamar filed the petition seeking amendment in the first place, had ever been shown to be discriminatory and therefore Adamar should be able to use that process until and unless a showing was made. Further, it was asserted that other protections are available to prevent discrimination such as the Law Against Discrimination (LAD) which is specifically preserved as an option notwithstanding anything in the Commission's affirmative action regulations (see N.J.A.C. 19:53-1.11). Adamar went on to cite Federal law wherein the cases under Title VII had established that job relatedness of employment tests or procedures need only be shown after a charge of discrimination has been brought.

## ADOPTIONS

RESPONSE: The Commission agrees with some of Adamar's comments. It is definitely true that under Federal case law there is no need for a showing of job relatedness until and unless a *prima facie* case of discrimination has been made out. However, this Commission need not limit itself to what the Federal government has set as its bounds. Note is taken of the fact that the previous version of the regulation placed a burden on casino licensees going well beyond what any other government entity requires. The Commission wishes to ease the burden of regulation on licensees, at least to the extent of not requiring an additional level of approval before there has been any demonstration that there is an evil that needs to be cured. On balance the Commission feels that Adamar's comments are on the mark enough to justify adoption of its proposed amendment.

COMMENT: CANJ presented a myriad of legal arguments in support of the amendment. Much of that goes to recent Supreme Court precedent regarding burdens of proof in cases under Title VII. The Commission does not believe that those cases mandate either adoption or rejection of the amendment. They reflect only the Court-approved analysis of what Congress meant when it passed Title VII. None of the cases setting those standards relied upon the United States Constitution for their results, and had the Commission chosen to retain the regulation without amendment, there would not have been a constitutional violation. CANJ also argued that it will be nearly impossible to prove the validity of a test before it has been used and statistics generated which might form the basis of such proof.

RESPONSE: There is some merit to this assertion, which the Commission recognizes. That too may be deemed a factor supporting the adoption of the amendment.

COMMENT: The Division, while noting that the job relatedness of a test must still be shown where a discriminatory impact appears, took issue with changing the timing of that burden. Basically, the Division argues that prevention of discrimination by pre-approval of tests better serves the purpose of combatting discrimination than waiting until such discrimination has already appeared.

RESPONSE: The Commission does not reject the possibility that, by virtue of the amendment, some discrimination will be allowed to take place until such time as it can be proven. However, what the Commission must note is that contrary to situations such as exist under Federal law, there is a duly designated governmental entity, the Division of Gaming Enforcement, which has specific responsibility to monitor the casino industry and to bring violations of the law to the Commission's attention by filing of a complaint. Because of the existence of this watchdog agency, the Commission deems the danger of undetected discrimination to be slight enough as to allow this amendment to be promulgated to effectuate other purposes without jeopardizing affirmative action principles.

COMMENT: BRC has asserted that, because of the Federal case law regarding the burden of proof in discrimination cases, a further amendment of the regulation is needed. It is BRC's point that under the regulation, even as amended, once there has been a case of discrimination made out it is up to the employer to prove that the test is job-related. Under Federal laws as it currently stands, after there has been a *prima facie* showing of discrimination, the employer need only come forth with some evidence of a business justification for use of the challenged procedure. The burden of proof remains at all times on the complainant, who would have to disprove the asserted business justification in order to prevail.

RESPONSE: The Commission does not agree that such a further change is mandated. The standard of proof outlined in the federal cases is one bearing on what is required by Federal statute and not the Constitution of the United States. If the Commission chooses to utilize a different standard under New Jersey law it may do so, and has so chosen. The fact that under the LAD the New Jersey courts have adopted Federal burdens of proof is likewise not dispositive. The LAD is very much the equivalent of the Federal Civil Rights Act while the Casino Control Act is a more limited and specifically directed statute. Therefore, the burden can be properly left with the casinos to prove the validity of a test in order to dispel any showing of a disparate impact which may appear.

COMMENT: The Taj Mahal comment asserts that use of the terminology "truly predictive" is imprecise and does not allow a licensee sufficient guidance in how to prove a test is valid. The suggested alternate basis is "rationality."

RESPONSE: The Commission's regulation, both before and after the amendment, refers those who need guidance in how to prove the validity of a test to the Equal Employment Opportunity Commission (EEOC) Guidelines on Employee Selection Procedures. "Truly predictive of job

## OTHER AGENCIES

performance" is a recognized concept and the Commission does not believe that deletion of that phrase is necessary.

COMMENT: The Claridge, in noting its support of the proposed amendment, relied upon the United States Supreme Court decision in *City of Richmond v. Croson Co.*, 488 U.S. \_\_\_\_\_, 102 L.Ed 2d 854 (1989). That case placed severe limits on the use of quotas for affirmative action purposes.

RESPONSE: Such a decision is not relevant to the amendment which the Commission has adopted. There are no quotas or other numbers utilized as requirements to burden the industry. *Croson* would not require this amendment to be adopted. Nevertheless, for reasons stated above, the Commission has chosen to adopt the amendment, not out of compulsion, but out of its own belief that the change is meritorious.

COMMENT: The New Jersey State Department of Personnel urged the Commission to retain the previous version of the rule. It expressed concern that to allow use of tests or other procedures without previous approval would "increase the probability of blatant and/or inadvertent discrimination by the individual casinos." It is further alleged that this would generate costs for the casinos in terms of defending many court actions involving claims of discrimination. The Department of Personnel went on to make comments directed specifically at the proposed procedure which Adamar had presented to the Commission for approval before asking that the regulation be amended to delete the necessity for such approval.

RESPONSE: The comments by the Department of Personnel aimed at Adamar's group interview procedure were not considered. Such views would be relevant only in a hearing designed to approve or disapprove Adamar's test, and such a hearing had been scheduled to take place if the Commission decided to retain the need for preapproval. The Commission did take note of the relevant comments by the Department of Personnel. The assertion that there will be numerous lawsuits thereby inflicting great cost upon the casinos is deemed too speculative in nature. While deleting the requirement for pre-approval may open up the possibility of some discriminatory procedures, there is no reason to believe that that will cause widespread discrimination and result in the filing of numerous claims. As forementioned, the presence of the Division, which may take notice of discrimination and file appropriate complaints, may well be deemed to lessen the number of individually filed complaints that may arise should any casino licensees employ discriminatory methods.

COMMENT: Casino employee Ana Cintron alleged that allowing the use of the plan desired by Adamar would increase nepotism and generally make both Hispanics and ex-offenders uncomfortable in a group setting.

RESPONSE: It is conceivable that these concerns could prove to be justified by the experience in using Adamar's procedure. However, as already stated as part of the response to the comment of the State Department of Personnel, in considering whether to adopt the amendment which would generally free the industry from the preapproval requirement, the Commission could not properly base its decision on reviewing the provisions of any one test to be used. If Adamar's group interview procedures prove to have a discriminatory impact, a complaint may be filed by the Division of Gaming Enforcement and if discrimination is shown to exist the Commission will act to rectify that situation.

COMMENT: The Division on Civil Rights' comment asserted that the Casino Control Act was consonant with the LAD in that they both contemplated the prevention of discrimination rather than merely the amelioration of discrimination after it has already occurred.

RESPONSE: The Commission accepts the general thrust of what is stated by the Division on Civil Rights. Nevertheless, for the reasons previously stated in response to other comments, the Commission does not believe that the threat of discrimination is great enough to outweigh the legitimate goal of reducing the regulatory burden on the industry, relying on the Division of Gaming Enforcement for policing of the industry to ensure that discrimination does not take hold. The advent of added instances of discrimination by virtue of the amendment of the regulation is simply too speculative to be a controlling factor.

COMMENT: Harrahs, in making a statement in favor of the adoption of the amendment, pointed to the lengthy delay which would ensue as a result of having to submit employment procedures. Presumably Harrahs was referring to its own situation whereby a number of years has gone by since submission of procedures for approval due to the need to perform a validity study.

RESPONSE: There is not enough of a record of previous applications for approval of employment procedures to enable the Commission to determine whether or not delay would be the likely outcome. Nonetheless, insofar as the concern expressed by Harrahs fits within the realm of

limiting the administrative burden, the Commission does agree with that comment and it has been reflected in the adoption of the amendment. Various other casinos including the Sands, Showboat, Trump Plaza and Trump Castle also supported the amendment as lessening the administrative burden and allowing employer flexibility.

COMMENT: Atlantic County, the New Jersey Federation of Democratic Women and the Community Health Law Project all oppose the amendment on the grounds that it would have an adverse impact on equal employment.

RESPONSE: These comments represent a generalized belief that any regulation tending to support equal employment opportunity should not be vitiated. The Commission does not believe that any such lessening of protection will result.

COMMENT: The South Jersey Lawyers' Association opposed the amendment asserting that a reasonable exercise of regulatory authority required preapproval of employment processes and techniques. The query was posed as to what it will take to trigger an investigation and possible filing of a complaint where an employee has been the victim of discrimination. Comments were also made about specific sections and questions of the Adamar group interview process.

RESPONSE: Once again, the Commission did not address comments directed at the Adamar process. This comment pointed to the hiring crisis in the casino industry. The Commission views that very crisis as one reason why it is less likely that any harm will result from deletion of the preapproval process in this amendment. Simply put, the industry cannot afford to bypass qualified employees, who are becoming increasingly scarce.

COMMENT: The Test City Child Care Center, Inc. objected to the amendment because too much time would go by and applicants would suffer from discriminatory procedures before the matter would come to the attention of the regulatory authorities.

RESPONSE: As has been previously noted in response to other comments, the existence of the Division of Gaming Enforcement, as a watchdog over the industry, with a section devoted exclusively to affirmative action/equal employment opportunity, should alleviate these concerns.

COMMENT: Both branches of the NAACP which filed comments were opposed to the amendment. It was indicated that there may be a difficult time in proving a *prima facie* case of discrimination as would require the licensee to then come forward and demonstrate the validity of its employment procedures. This was also noted by the Tropicana

Federated Charity Club, Inc. Finally the South Jersey Chapter of the National Conference of Christians and Jews asserted that amendment of the regulation would place an unfair and costly burden on employees to prove that discrimination exists.

RESPONSE: Yet again the Commission must respond by saying that even though there may be some legitimacy to the fears of possible discrimination by virtue of the amendment of the regulation, the presence of the Division of Gaming Enforcement as an entity specifically entrusted with enforcement of the Act should be sufficient to allow the Commission to proceed with eliminating a level of bureaucracy without engendering additional discrimination.

Full text of the adoption follows:

19:53-1.5 Affirmative action requirements for applicants and licensees

(a) Affirmative action programs required by N.J.A.C. 19:53-1.3(b) shall include the following:

1.-7. (No change.)

8. If an applicant or a licensee employs or will imminently employ 15 or more employees, the applicant or licensee must provide to the Commission a description of all criteria, tests and/or other procedures used to determine whether to employ an applicant for employment or to transfer, advance, upgrade or promote an existing employee. In the event that a discriminatory impact is shown, the applicant or licensee must demonstrate to the satisfaction of the Commission that no less discriminatory method of job evaluation and prediction is feasible. In such case, such applicant or licensee must justify the requirements imposed and must demonstrate to the satisfaction of the Commission that any criteria, tests or other procedures are truly predictive of job performance. Such applicant or licensee shall discontinue the use of any criteria, tests or other procedure which has a discriminatory impact and which cannot be validated to the satisfaction of the Commission. In attempting to establish the validity of a criterion, test or other procedure, the applicant or licensee shall be guided by the criteria adopted by the New Jersey Division of Civil Rights, the Federal Equal Employment Opportunity Commission, and by the applicable cases and statutes, both State and Federal.

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

# PUBLIC NOTICES

## ENVIRONMENTAL PROTECTION

(a)

### THE COMMISSIONER

#### Notice of Receipt of Petition for Rulemaking Concerning Revisions to the Safe Drinking Water Act Rules

Petitioner: Nicholas J. Fano, Esq.

**Take notice** that on March 1, 1990, the Department of Environmental Protection (DEP) received a petition from Nicholas J. Fano, Esq. for rulemaking concerning the Safe Drinking Water Act rules.

The petitioner requests that DEP revise N.J.A.C. 7:10, entitled "Safe Drinking Water Act." The petition seeks to (1) establish lower maximum contaminant levels (MCL) for drinking water based on technological advancements in testing methods; (2) requiring testing for additional contaminants in drinking water and establish appropriate MCL's for those contaminants set forth in the "Ground Water Quality Standards", N.J.A.C. 7:9-6, those listed in 40 CFR 141.40, and those discovered in West Caldwell's drinking water, specifically Chloroform, Bromodichloromethane, Aroclor 1016, 1221, 1232, 1242, 1248, 1254 and 1260; (3) establish MCL's for all contaminants set forth in N.J.S.A. 58:12A-1 et seq.; (4) establish MCL's for those contaminants listed in N.J.A.C. 7:10 which do not have established MCL's; and (5) have DEP complete "major revisions" to N.J.A.C. 7:10 as indicated in the response to comments for the 1989 readoption of N.J.A.C. 7:10 (21 N.J.R. 3098(a)).

In accordance with N.J.A.C. 7:1-1.2, DEP shall subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition.

(b)

### DIVISION OF WATER RESOURCES

#### Amendment to the Atlantic County Water Quality Management Plan Public Notice

**Take notice** that on November 27, 1989, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Atlantic County Water Quality Management Plan was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for Egg Harbor Township. The WMP delineates existing and proposed sewer service areas with treatment at the Atlantic County Utilities Authority's (ACUA) City Island Treatment Plant: Three small additional areas located in non-contiguous portions of the Township propose service through adjacent communities to the ACUA plant. These are: the western end of Somers Point-Longport Boulevard, to be tied in through Somers Point; the eastern end of the same boulevard; the area known as Seaview Harbor, to be tied into the ACUA system in Longport; and an area on the Northfield-Margate Boulevard known as Mariners' Cove to be tied in to the ACUA system in Northfield. The remaining areas of the Township will be served by individual subsurface sewage disposal systems.

(c)

### DIVISION OF WATER RESOURCES

#### Amendment to the Monmouth County Water Quality Management Plan Public Notice

**Take notice** that on December 5, 1989, pursuant to the provisions of the Water/Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Monmouth County Water Quality Management Plan was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for Wall Township. The WMP de-

lineates existing sewer service areas and proposed service areas for the Township of Neptune Sewerage Authority, the South Monmouth Regional Sewerage Authority and the Manasquan River Regional Sewerage Authority/Ocean County Utilities Authority. The remainder of the Township is shown as served by individual subsurface sewage disposal systems.

(d)

### DIVISION OF WATER RESOURCES

#### Amendment to the Northeast Water Quality Management Plan Public Notice

**Take notice** that an amendment to the Northeast Water Quality Management (WQM) Plan has been submitted for approval. This amendment would approve the Caldwell Borough Wastewater Management Plan (WMP). This WMP provides for pumping of 1.52 million gallons per day of wastewater flow from a portion of the Caldwell Sewage Treatment Plant (STP) sewer service area to the Parsippany-Troy Hills STP. The portion of the Caldwell STP sewer service area to be transferred to the Parsippany-Troy Hills STP sewer service area is delineated in the WMP and includes the major portion of Roseland and small sections of West Orange, West Caldwell, Essex Fells and Livingston.

**This notice** is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, CN-029, Third Floor, 401 East State Street, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

**Interested persons** may submit written comments on the amendment to Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

**Any interested persons** may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(e)

### DIVISION OF FISH, GAME AND WILDLIFE

#### Notice of Closure of State Waters to Surf Clam Harvest

**Take notice** that, in accordance with N.J.A.C. 7:25-12.10(e)3i, all State waters will be closed to surf clam harvest from 6:00 P.M. (1800 hours) on April 7, 1990 through 6:00 A.M. (0600 hours) on November 1, 1990. Under former N.J.A.C. 7:25-12.1(d), the surf clam harvest quota for the 1989-90 season was set at 500,000 bushels of surf clams. On January 16, 1990, the Department adopted a new subchapter at N.J.A.C. 7:25-12 governing surf clam management (see 22 N.J.R. 183(a)). In accordance with N.J.A.C. 7:25-12.10(e)2, the Commissioner has determined based on harvest reporting that the total State surf clam harvest for the 1989-90 season as of February 28, 1990 was at least 393,869 bushels of surf clams. Based on harvest reporting since February 28, 1990, the average rate of surf clam harvest during the 1989-90 season, and other factors influencing surf clam harvest in the State, the Commissioner has determined that the season quota of 500,000 bushels of surf clams will have been harvested by April 7, 1990. The Commissioner has also determined, based on the annual biological survey by the Department of the State's standing stock of surf clams, that raising the harvest quota for the 1989-90 surf clam harvest season would be detrimental to the State's surf clam resource. Therefore, in accordance with N.J.A.C. 7:25-12.10(e)3i, the Commissioner has closed the State's waters to harvest of surf clams for the

remainder of the 1989-90 harvest season, effective 6:00 P.M. (1800 hours) on April 7, 1990. This closure extends until 6:00 A.M. on November 1, 1990, the opening date of the 1990-91 surf clam harvest season. Notice of the closure of the 1989-90 surf clam harvest season has been sent to all surf clam vessel license holders, as required by N.J.A.C. 7:25-12.10(f).

## HUMAN SERVICES

### (a)

#### DIVISION OF YOUTH AND FAMILY SERVICES

##### Notice of Available Grant Funds Family Shelter Strategy Project

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq., the Department of Human Services announces the following availability of funds.

**A. Name of the grant program that has funds available:** Family Shelter Strategy for New Jersey Fiscal Year July 1, 1990 to June 30, 1991.

**B. Purpose for which the grant program funds shall be used:** To provide services for homeless Aid to Families with Dependent Children (AFDC) families in Essex County through contracts with the Department of Human Services. These funds are for the development of transitional housing services consistent with the Department's previously published Shelter Strategy Guidelines.

**C. Amount of money in the grant program:** Approximately \$303,298 will be awarded for State Fiscal Year 1991.

**D. Groups or entities (citizens, counties, municipalities of certain class, etc.) which may apply for the grant program:** Agencies must be Essex County, New Jersey, based organizations or corporate bodies; non-profit or public entities.

**E. Qualifications needed by applicant to be considered for the grant program:** Through written proposals, agencies must demonstrate the capacity to develop and carry out the proposed Family Shelter Strategy project which provides transitional housing services to homeless AFDC families.

**F. Procedure for eligible organizations to apply for grant funds:** Proposal packages and Family Shelter Strategy Guidelines may be requested from:

Joan Ayers, Department Representative  
Division of Youth and Family Services  
1180 Raymond Boulevard  
Newark, New Jersey 07102  
(201) 648-4137

**G. Address of division, office or official receiving application:** Same as above.

**H. Deadline by which applications must be submitted to the office:** Proposals must be submitted by May 17, 1990.

**I. Date by which applicants shall be notified whether they will receive funds under the grant program:** Applicants shall receive notice of approval or disapproval by June 15, 1990.

## LAW AND PUBLIC SAFETY

### (b)

#### BOARD OF MEDICAL EXAMINERS

##### Notice of Corrective Action on Petition for Rulemaking

**N.J.A.C. 13:35**

Petitioner: New Jersey Optometric Association.

Authority: N.J.S.A. 52:14B-4(f); N.J.S.A. 45:9-2.

Take notice that, subsequent to the filing with the Office of Administrative Law of the Notice of Action on Petition for Rulemaking published in the April 2, 1990 New Jersey Register at 22 N.J.R. 1162(a), it was brought to the Board's attention that, inadvertently, petitioner and others may not have had adequate notice of the Board's consideration of this petition, and, accordingly, after additional notice, the Board of Medical Examiners reconsidered the petition for rulemaking at its meeting of April 11, 1990 at the Hughes Justice Complex, Trenton, New Jersey, 4th Floor Conference Center.

### (c)

#### DIVISION OF CONSUMER AFFAIRS ADVISORY BOARD OF PUBLIC MOVERS AND WAREHOUSEMEN

##### Notice of Receipt of Petition for Rulemaking Transportation Brokers

**N.J.A.C. 13:44D-4.3(c)**

Petitioners: Transportation Brokers Conference of America, New Jersey Transportation Brokers Association, Total Transportation Services, Inc., by William J. Hanlon, Attorney for Petitioners.

Authority: N.J.S.A. 52:14B-4(f).

Take notice that on March 5, 1990, petitioner filed a petition with the Division of Consumer Affairs requesting an interpretive ruling or, in the alternative, amendment or elimination of N.J.A.C. 13:44D-4.3(c) of the rules of the Advisory Board of Public Movers and Warehousemen. The rule presently states, "No public mover and/or warehouseman shall be permitted to employ an estimator or broker who also represents any other public mover and/or warehouseman."

Petitioners are concerned that a broad interpretation of N.J.A.C. 13:44D-4.3(c) could effectively preclude transportation brokers from conducting a substantial portion of the business they now conduct in the State of New Jersey, and request that the Division of Consumer Affairs issue an interpretive ruling stating that N.J.A.C. 13:44D-4.3(c) means that public movers and/or warehousemen cannot employ estimators or brokers to provide estimates. In the alternative, petitioners request that the rule be amended to read as follows: "No public mover and/or warehouseman shall be permitted to employ an estimator or broker who also represents any other public mover and/or warehouseman to provide an estimate." Petitioners state further, "If it is the belief of the Division of Consumer Affairs that the intent and meaning of this rule is that public movers and warehousemen should not be permitted to utilize transportation brokers in any aspect of business in the State of New Jersey, then petitioners respectfully submit that this rule should be eliminated."

Petitioners argue as follows in support of the petition: First, there is no basis in fact for attempting to exclude transportation brokers from continuing to conduct business in New Jersey, since there have been no incidents of catastrophic loss, damage without insurance, or other harm to the public as a result of transportation brokers' activities. Further, the exclusion of brokers would not be in the consumers' interest but rather would be a policy rooted in anti-competitive considerations. Petitioners believe that an attempt to exclude from competition a viable section of the transportation industry from doing business in the State of New Jersey directly contradicts the spirit and letter of all Federal and state statutes dealing with restraint of trade, anti-trust, and consumer affairs. Enforcement action of such a rule would inevitably lead to extensive litigation in the courts and would most likely involve petitioners and other national interest groups, consumer groups, and Federal and state governmental agencies dealing in anti-trust matters.

Petitioners also believe that a rule that would completely preclude a company from continuing a business in the State of New Jersey that has been specifically authorized by the Federal government would be in contravention of basic constitutional rights. Furthermore, it is the position of the petitioners that the issue of whether brokers should be allowed to do business in the State of New Jersey and under what circumstances is a determination for the New Jersey legislature. Petitioners believe that, if interpreted to exclude brokers, N.J.A.C. 13:44D-4.3(c) goes beyond authority issued by the Legislature.

Petitioners' petition for rulemaking is on file at the offices of the Division of Consumer Affairs. Interested parties may obtain a copy of the full petition by contacting Diane Romano, Advisory Board of Public Movers and Warehousemen, Room 511, 1100 Raymond Boulevard, Newark, N.J. 07102.

In accordance with the provisions of N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6, the petition will be reviewed to determine what action should be taken in response to same. Thereafter, notice of such action will be mailed to the petitioner and filed with the Office of Administrative Law for publication in the New Jersey Register.

**(a)**

**DIVISION OF MOTOR VEHICLES  
Notice of Common Carrier Applicant**

**Take notice** that Col. Clinton L. Pagano, Director, Division of Motor Vehicles, pursuant to the authority of N.J.S.A. 39:5E-11, hereby lists the name and address of an applicant who has filed an application for common carrier's Certificate of Public Convenience Permit.

**COMMON CARRIER (NON-GRANDFATHER)**  
A C Berwick Trucking Corp.  
299 Edison Avenue  
W. Babylon, NY 11704

**Protests** in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicles, 25 South Montgomery St., Trenton, New Jersey 08666, within 20 days (May 6, 1990) following the publication of an application.

**(b)**

**STATE LAW ENFORCEMENT PLANNING AGENCY  
Notice of Allocation of Federal Funds under the  
Victim Assistance Portion of the Victims of Crime  
Act**

**Take notice** that the Governing Board of the State Law Enforcement Planning Agency adopted the following allocation of Federal funds under the victim assistance portion of the Victims of Crime Act:

Continuation grants to the 21 county prosecutors' offices in the amount of \$1,495,000. Each county shall receive a minimum of \$30,000 with the balance distributed on the basis of a formula which weighs equally population, Index Crime offenses reported and the average number of recipient of Aid to Families with Dependent Children. A total of \$151,000 will continue the two State agency awards.

A total of \$250,000 is being set aside for grants to units of government or combinations to address the four Federal priority areas which are: victims of child abuse, sexual assault, spousal abuse and previously underserved victims of violent crimes. A Request for Proposal has been circulated to interested parties. A copy of the Request for Proposal and the Agency's Applicant Guide is available by writing to: State Law Enforcement Planning Agency, CN 083, Trenton, NJ 08625 or telephoning (609) 984-2090.

**TRANSPORTATION**

**(c)**

**THE COMMISSIONER  
Notice of Agency Action on Petition for Rulemaking  
Permits for Driveways (ACCESS); Street Intersection  
Rules Government Driveway Permit Fee  
N.J.A.C. 16:41-2.4(h)3**

Petitioner: John E. Trafford, Executive Director, New Jersey State League of Municipalities.  
Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 16:1A-1.3.

**Take notice** that on January 26, 1990, petitioner requested the Department of Transportation to promulgate rules and regulations prescribing: (1) the driveway permit fee of \$500.00 at a minimum be lowered to \$50.00; (2) at the maximum, the government driveway application and permit fees be repealed; and (3) municipalities be given a full and complete exemption from any driveway access fees. In submitting its present fee structure, municipalities being non-profit entities and political subdivisions of the State would be charged a higher fee than that being charged to private developers.

This petition was considered in accordance with N.J.A.C. 16:1A-1.3. Notice of the petition was published in the March 5, 1990 issue of the New Jersey Register at 22 N.J.R. 864(a).

The Department has reviewed the petition and, after due consideration in accordance with law, has decided not to adopt the petitioner's proposal as submitted, and denies the requests contained in the petition for the following reasons:

1. Upon careful consideration, the Department has determined that nothing in the existing proposed rules actually precludes a municipality from applying for a minor driveway or minor development driveway, which fees (application and permit combined) are \$300.00 less than a combined application and permit fee for a government driveway (\$350.00 for the former versus \$650.00 for the latter). Accordingly, in this instance, a municipality would not be subject to the hardships contemplated in the petition.

2. It is important to note that as originally promulgated, entities applying for government driveway permits will continue to receive a substantial discount as compared with equivalent application and permit fees for private interests for major permits and major planning review permits. The combined fee for a major driveway (application plus permit fee) is \$5,000 and the combined fee for a major permit requiring planning review is \$12,000. In all cases, where a government driveway would otherwise fall into those two categories, the \$650.00 fee would be applied.

3. The \$150.00 application fee and \$500.00 permit fee for government driveways was set to coincide with the existing regulations (codified at N.J.A.C. 16:41-7.3) covering applications for permits for street intersections, which fees have been long-standing, and are significantly below actual costs the Department incurs in reviewing the same, but were left deliberately low in an effort to reduce impacts on the other levels of government.

4. The request for a \$50.00 figure is unrealistically low, not based on sound analyses, and was a result of a typographical error as described in the correction notice appearing in the New Jersey Register dated January 2, 1990 at 22 N.J.R. 59(c).

For the above stated reasons, the Department hereby denies the petition for a rule change, and is of the impression that the concerns as raised in the petition are sufficiently addressed by the Department's commitment to accept applications for government driveways at the lower equivalent private rate where applicable. Further, the combined \$650.00 fee is significantly below costs which will be incurred in reviewing most government driveway applications. The Department has decided to retain that fee level as it has been charged at a discount in the past for street permits.

The Department foresees no significant detrimental financial impacts on the other levels of government based on a continuation of the rule as applicable, and no unfair advantages to be conferred on private interests as was described in the petition, based on the above reasons.

# 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 March 5, 1990 issue.**

**If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers.** A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

### Terms and abbreviations used in this Index:

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1990 d.1 means the first rule adopted in 1990.

**Adoption Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

**Transmittal.** A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

**N.J.R. Citation Locator.** An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT FEBRUARY 20, 1990**

**NEXT UPDATE: SUPPLEMENT MARCH 19, 1990**

**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
21 N.J.R. 955 and 1036	April 17, 1989	21 N.J.R. 3331 and 3584	November 6, 1989
21 N.J.R. 1037 and 1178	May 1, 1989	21 N.J.R. 3585 and 3688	November 20, 1989
21 N.J.R. 1179 and 1474	May 15, 1989	21 N.J.R. 3689 and 3812	December 4, 1989
21 N.J.R. 1475 and 1598	June 5, 1989	21 N.J.R. 3813 and 3986	December 18, 1989
21 N.J.R. 1599 and 1762	June 19, 1989	22 N.J.R. 1 and 88	January 2, 1990
21 N.J.R. 1763 and 1934	July 3, 1989	22 N.J.R. 89 and 272	January 16, 1990
21 N.J.R. 1935 and 2148	July 17, 1989	22 N.J.R. 273 and 584	February 5, 1990
21 N.J.R. 2149 and 2426	August 7, 1989	22 N.J.R. 585 and 686	February 20, 1990
21 N.J.R. 2427 and 2690	August 21, 1989	22 N.J.R. 687 and 884	March 5, 1990
21 N.J.R. 2691 and 2842	September 5, 1989	22 N.J.R. 885 and 1010	March 19, 1990
21 N.J.R. 2843 and 3042	September 18, 1989	22 N.J.R. 1011 and 1182	April 2, 1990
21 N.J.R. 3043 and 3204	October 2, 1989	22 N.J.R. 1183 and 1290	April 16, 1990
21 N.J.R. 3205 and 3330	October 16, 1989		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>ADMINISTRATIVE LAW—TITLE 1</b>			
1:1-5.4	Nonlawyer representation	21 N.J.R. 2693(a)	R.1990 d.169
1:1-12.5	Partial summary decisions	22 N.J.R. 3(a)	22 N.J.R. 916(a)
1:1-14.10	Interlocutory review of ALJ ruling	22 N.J.R. 590(a)	
1:6A	Special education hearings	21 N.J.R. 2693(a)	R.1990 d.169
1:6A	Special education hearings: public hearings	21 N.J.R. 3045(a)	22 N.J.R. 916(a)
1:11-10.1	Discovery in private passenger automobile insurance rate hearings	21 N.J.R. 3815(a)	
1:13-1.1, 14.4	DMV cases involving excessive points, surcharges, and certain failures to appear	22 N.J.R. 91(a)	

**Most recent update to Title 1: TRANSMITTAL 1990-1 (supplement February 20, 1990)**

<b>AGRICULTURE—TITLE 2</b>			
2:2-3.3	Tuberculin testing of cattle	21 N.J.R. 3333(a)	R.1990 d.201
2:24	Registration and transportation of bees	21 N.J.R. 3045(b)	R.1990 d.202
2:32-2.22	Sire Stakes qualifying times at pari-mutuel tracks	22 N.J.R. 3(b)	R.1990 d.203
2:52	Milk processors, dealers and subdealers	22 N.J.R. 888(a)	22 N.J.R. 1116(c)

**Most recent update to Title 2: TRANSMITTAL 1990-2 (supplement February 20, 1990)**

<b>BANKING—TITLE 3</b>			
3:0	Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 275(a)	
3:1-14	Revolving credit equity loans	21 N.J.R. 3333(b)	
3:1-17	Senior citizen homeowner's reverse mortgage loans	21 N.J.R. 3207(b)	
3:2	Advertising by financial institutions	22 N.J.R. 690(b)	
3:16-2.3	Pawnbrokers' sales of unredeemed pledges at public auction	22 N.J.R. 1015(a)	
3:18-3.5	Repeal (see 3:1-14)	21 N.J.R. 3333(b)	

**Most recent update to Title 3: TRANSMITTAL 1990-2 (supplement February 20, 1990)**

## CIVIL SERVICE—TITLE 4

**Most recent update to Title 4: TRANSMITTAL 1990-1 (supplement January 16, 1990)**

<b>PERSONNEL—TITLE 4A</b>			
4A:2-2.3	Misuse of State property	22 N.J.R. 1015(b)	

**Most recent update to Title 4A: TRANSMITTAL 1990-1 (supplement January 16, 1990)**

<b>COMMUNITY AFFAIRS—TITLE 5</b>			
5:2-1.1	Department organization	Exempt	R.1990 d.159
5:2-1.1	Department organization	Exempt	R.1990 d.199
5:10-1.5, 1.8, 1.10, 1.11, 16.3	Hotels and multiple dwellings: administrative corrections	_____	_____
5:10-1.6, 1.11, 1.12, 2.2	Hotels and multiple dwellings: retreat lodging facility registration and inspection certificates	22 N.J.R. 275(b)	
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)	
5:19-4.3	Continuing care retirement communities: administrative correction	_____	_____

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:22-3	Urban enterprise zone municipalities: tax abatements for residential construction	22 N.J.R. 591(a)		
5:23	Uniform Construction Code: annual public hearing on change proposals	22 N.J.R. 1016(a)		
5:23-1.1, 1.4, 3.11, 4.1, 4.12-4.15, 4.21, 4.22, 4.24-4.39, 4A	Uniform Construction Code: industrialized and modular buildings	22 N.J.R. 691(a)		
5:23-1.1, 3.4, 4.5, 10	Uniform Construction Code: Radon Mitigation Subcode	21 N.J.R. 3696(a)		
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:23-3.14-3.17, 3.20, 3.21	Uniform Construction Code subcodes	22 N.J.R. 909(a)		
5:23-4.24A	Uniform Construction Code: alternative plan review program for large projects	21 N.J.R. 1770(a)		
5:23-7.2-7.6, 7.8, 7.9, 7.11, 7.12, 7.17, 7.18, 7.30, 7.37, 7.41, 7.55-7.57, 7.61, 7.67, 7.68, 7.71-7.73, 7.75, 7.76, 7.80-7.82, 7.87, 7.94-7.97	Barrier Free Subcode	21 N.J.R. 2774(a)		
5:23-9.3	Uniform Construction Code: FRT plywood as roof sheathing	21 N.J.R. 3870(a)		
5:23-9.3	Uniform Construction Code: public meeting regarding FRT plywood use as roof sheathing	22 N.J.R. 706(a)		
5:23-9.4	Uniform Construction Code: earthquake zones and seismic design requirements	22 N.J.R. 592(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	21 N.J.R. 3698(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	22 N.J.R. 277(a)		
5:27	Rooming and boarding houses	21 N.J.R. 3871(a)		
5:27-1.6, 1.9, 2.1, 8.1	Rooming and boarding house licensure: alcohol and drug rehabilitation facilities	22 N.J.R. 912(a)		
5:27-11.2	Rooming and boarding houses: administrative correction	_____	_____	22 N.J.R. 921(b)
5:29-1.2	Landlord registration form for one and two-unit rental dwellings: administrative correction	21 N.J.R. 3699(a)		
5:30	Local Finance Board rules	22 N.J.R. 706(b)		
5:30-14, 17	Repeal; recodify (see 5:34)	22 N.J.R. 724(a)		
5:33	Tax collection administration	22 N.J.R. 706(b)		
5:34	Local public contracts	22 N.J.R. 724(a)		
5:71	County offices on aging	22 N.J.R. 1016(b)		
5:80	New Jersey Housing and Mortgage Finance Agency	22 N.J.R. 277(b)		
5:80-18.1, 18.2, 18.3, 18.8	Housing and Mortgage Finance Agency: debarment from agency contracting	21 N.J.R. 3350(a)		
5:80-28.1	Housing and Mortgage Finance Agency: nonpublic records	21 N.J.R. 3351(a)		
5:91-1.2, 4.5, 6.2, 7.1-7.6	Council on Affordable Housing: mediation and post mediation process	21 N.J.R. 1773(a)		
5:92-8.2	Council on Affordable Housing: inclusionary development on environmentally sensitive lands	22 N.J.R. 730(a)		
5:92-18	Council on Affordable Housing: municipal conformance with State Development and Redevelopment Plan	21 N.J.R. 1186(a)		
5:100	Ombudsman for institutionalized elderly: practice and procedure	22 N.J.R. 1016(c)		

**Most recent update to Title 5: TRANSMITTAL 1990-2 (supplement February 20, 1990)**

**MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A**

5A:1	Department organization	Exempt	R.1990 d.200	22 N.J.R. 1117(c)
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**Most recent update to Title 5A: TRANSMITTAL 1989-1 (supplement July 17, 1989)**

**EDUCATION—TITLE 6**

6:22-2.5	Schools for handicapped pupils: school space sizes and capacity	22 N.J.R. 277(c)		
6:29	Health, safety and physical education	21 N.J.R. 3815(b)	R.1990 d.154	22 N.J.R. 793(a)
6:46-1.1, 4.6, 4.10, 4.12	Private vocational schools: instructional hours	21 N.J.R. 3700(a)	R.1990 d.150	22 N.J.R. 799(a)
6:46-4.5, 4.12, 4.16	Vocational schools and education	22 N.J.R. 91(b)		
6:68	State Library Assistance Programs	21 N.J.R. 3822(a)	R.1990 d.179	22 N.J.R. 921(c)

**Most recent update to Title 6: TRANSMITTAL 1990-2 (supplement February 20, 1990)**

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>ENVIRONMENTAL PROTECTION—TITLE 7</b>				
7:1C	Ninety-day construction permits	22 N.J.R. 731(a)		
7:1H	Administration of county environmental health services	22 N.J.R. 732(a)		
7:3-3	Advertising by tree experts	21 N.J.R. 3212(a)	R.1990 d.188	22 N.J.R. 1122(a)
7:5C-5.1	Endangered plant species	22 N.J.R. 94(a)		
7:7A-9.2	Freshwater wetlands protection: Statewide general permits	22 N.J.R. 278(a)		
7:11-2.1, 2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir System: schedule of rates	21 N.J.R. 3836(a)		
7:11-4	Manasquan Reservoir Water Supply System: rate schedule	21 N.J.R. 3838(a)		
7:11-4	Manasquan Reservoir Water Supply System rate schedule: change of public hearing location	22 N.J.R. 4(a)		
7:11-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)		
7:12-1.2, 9	Soft clam and hard clam depuration	22 N.J.R. 97(a)		
7:13-7.1	Redelineation of Rowe Brook in Tewksbury Township, Hunterdon County	21 N.J.R. 3843(a)		
7:13-7.1	Redelineation of Pond Run in Hamilton Township, Mercer County	21 N.J.R. 3843(b)		
7:14A-1.8	NJPDES fee schedule for permittees and applicants	21 N.J.R. 3590(a)	R.1990 d.197	22 N.J.R. 1124(a)
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:14A-6.15	NJPDES program: list of hazardous constituents for groundwater monitoring	21 N.J.R. 3844(a)		
7:14A-12.22, 12.23	Sewer connection ban exemptions	21 N.J.R. 2240(c)		
7:14B-1.3, 1.4, 1.6, 2.1-2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4-12, 15	Underground storage tank systems	21 N.J.R. 2242(a)		
7:14B-13	Underground Storage Tank Improvement Fund loan program	21 N.J.R. 2265(a)		
7:17	Repeal (see 7:12-1.2, 9)	22 N.J.R. 97(a)		
7:18-1.1, 1.4, 1.6, 1.7, 1.9, 2.1-2.4, 2.6, 2.7, 2.10-2.13, 2.15, 5.3, 5.4, 5.5, 5.7, 5.8	Radon laboratory certification program	21 N.J.R. 3354(a)		
7:19	Water supply allocation permits	21 N.J.R. 3594(a)	R.1990 d.180	22 N.J.R. 932(a)
7:19-2.2, 6.10	Water supply allocation permits: administrative corrections	_____	_____	22 N.J.R. 1265(a)
7:19-3.8	Fees for water allocation permits: administrative correction	_____	_____	22 N.J.R. 1134(a)
7:19A	Emergency water supply allocation	22 N.J.R. 102(a)	R.1990 d.163	22 N.J.R. 944(a)
7:19B	Water emergency surcharge schedule	22 N.J.R. 106(a)	R.1990 d.164	22 N.J.R. 947(a)
7:20-1	Dam safety standards	22 N.J.R. 279(a)		
7:25A	Oyster resource management	22 N.J.R. 283(a)		
7:26-1.4, 7.4, 7.7, 8.2, 8.3, 8.4, 8.13, 9.1, 9.2, 10.6, 10.7, 10.8, 11.3, 11.4, 12.1	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:26-1.4, 7.4, 8.2	Hazardous waste management: testing facility exemptions for treatability studies	21 N.J.R. 3705(a)		
7:26-2, 2A, 2B, 8	Management of resource recovery facility combustion residual ash: preproposal	22 N.J.R. 108(b)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Bergen County	21 N.J.R. 1486(b)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties	22 N.J.R. 284(a)		
7:26-7.2, 7.4, 8.1, 8.5, 8.7, 8.13, 8.20	Hazardous waste management: waste code hierarchy; waste determination; waste oils listing; container labeling	22 N.J.R. 288(a)		
7:26-8.2, 12.3	Radioactive mixed wastes	21 N.J.R. 1053(a)		
7:26-8.13	Manifesting of nonhazardous waste: preproposal	21 N.J.R. 3220(a)		
7:26-8.21, 12.2	NJPDES program: list of hazardous constituents for groundwater monitoring	21 N.J.R. 3844(a)		
7:27-8	Air pollution control permit and certificate process	22 N.J.R. 292(a)		
7:27-8.2	Air pollution control permit and certificate process: correction to proposed amendment	22 N.J.R. 593(a)		
7:27-23	Volatile organic substances in consumer products: notice of rule invalidation	_____	_____	22 N.J.R. 1134(b)
7:27-23.2-23.7	Volatile organic substances in architectural coatings and air fresheners	21 N.J.R. 3360(a)		
7:28	Radiation protection	22 N.J.R. 890(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:28-1.4, 20	Particle accelerators for industrial and research use	21 N.J.R. 3364(a)		
7:28-16	Dental radiographic installations	22 N.J.R. 894(a)		
7:28-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)		
7:29	Noise control	22 N.J.R. 307(a)		
7:29	Noise control: extension of comment period	22 N.J.R. 1045(b)		
7:36-8	Green Acres Program: public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 593(b)		
7:50-2.11, 4.2, 4.3, 4.5, 4.53, 4.62, 4.66, 5.2, 5.13, 5.23, 5.24, 5.28, 5.43, 5.44, 5.47, 6.65, 6.154, 6.156	Pinelands Comprehensive Management Plan	21 N.J.R. 3381(a)	R.1990 d.170	22 N.J.R. 948(a)

**Most recent update to Title 7: TRANSMITTAL 1990-2 (supplement February 20, 1990)**

**HEALTH—TITLE 8**

8:13-2	Depuration of hard shell and soft shell clams	22 N.J.R. 109(a)		
8:19	Newborn Screening Program	22 N.J.R. 733(a)		
8:19-2	Newborn biochemical screening	21 N.J.R. 3633(b)	R.1990 d.146	22 N.J.R. 844(a)
8:19-2	Newborn biochemical screening: public hearing	21 N.J.R. 3708(a)		
8:20	Birth defects registry	21 N.J.R. 3636(a)	R.1990 d.187	22 N.J.R. 1134(c)
8:31A	Standard Hospital Accounting and Rate Evaluation (SHARE)	21 N.J.R. 3872(a)	R.1990 d.167	22 N.J.R. 1135(a)
8:31B-3.3, 4.6, 4.41	Hospital reimbursement: uncompensated care audit	21 N.J.R. 3638(a)		
8:31B-3.17	Hospital reimbursement: on-site audits	21 N.J.R. 3639(a)		
8:31B-3.24	Hospital reimbursement: employee health insurance	21 N.J.R. 3277(a)		
8:31B-4.38, 4.61	Hospital reimbursement: Maternity, Outreach, and Management Services (MOMS)	22 N.J.R. 594(a)		
8:31B-4.40	Hospital reimbursement: appropriate collection procedures	21 N.J.R. 3873(a)		
8:31B-4.125	Hospital reimbursement: outside collection costs	21 N.J.R. 3639(b)		
8:31B-5.3	Hospital reimbursement: Diagnosis Related Groups classification	21 N.J.R. 3873(b)		
8:31B-5.3	Diagnosis Related Groups classification: correction to proposal and extension of comment period	22 N.J.R. 308(a)		
8:31B-App. XI	Hospital reimbursement: graduate medical education	22 N.J.R. 735(a)		
8:33A	Surgical facilities: certificate of need	21 N.J.R. 3888(a)	R.1990 d.168	22 N.J.R. 983(b)
8:33H	Long-term care facilities and services	22 N.J.R. 897(a)		
8:33P	Designation of trauma centers: certificate of need	21 N.J.R. 3889(a)	R.1990 d.166	22 N.J.R. 983(c)
8:39-25.2	Long-term care facilities: enforcement of nurse staffing requirements			22 N.J.R. 1161(e)
8:40	Invalid coach and ambulance services	22 N.J.R. 595(a)		
8:43F-23, 24	Adult day health care facilities: physical plant and functional requirements	21 N.J.R. 3403(a)		
8:43G-3	Hospital licensure: compliance with mandatory rules and advisory standards	21 N.J.R. 1608(a)		
8:43G-4.2	Patient rights (advisory)	21 N.J.R. 2160(b)		
8:43G-5.4, 5.6, 5.8, 5.10, 5.17	Administrative and hospital-wide (advisory)	21 N.J.R. 2926(a)		
8:43G-7.4, 7.6, 7.11, 7.13, 7.27, 7.36	Cardiac services (advisory)	21 N.J.R. 2162(a)		
8:43G-8.3, 8.5, 8.8	Central supply (advisory)	21 N.J.R. 1609(a)		
8:43G-9.3, 9.6, 9.8, 9.10, 9.12, 9.15, 9.17, 9.22	Critical and intermediate care (advisory)	21 N.J.R. 2167(a)		
8:43G-10.2, 10.5, 10.7, 10.9	Dietary standards (advisory)	21 N.J.R. 1611(a)		
8:43G-11.2	Discharge planning (advisory)	21 N.J.R. 1612(a)		
8:43G-12.4, 12.6, 12.8	Emergency department (advisory)	21 N.J.R. 1613(a)		
8:43G-13.3, 13.6	Housekeeping and laundry (advisory)	21 N.J.R. 1616(a)		
8:43G-14.2, 14.4	Infection control and sanitation (advisory)	21 N.J.R. 1618(a)		
8:43G-15.6	Medical records (advisory)	21 N.J.R. 2171(a)		
8:43G-16.4	Medical staff standard (advisory)	21 N.J.R. 1621(a)		
8:43G-17.2	Nurse staffing (advisory)	21 N.J.R. 1623(a)		
8:43G-18.4, 18.6, 18.8	Nursing care (advisory)	21 N.J.R. 1624(a)		
8:43G-19.4, 19.6, 19.9, 19.11, 19.28	Obstetrics (advisory)	21 N.J.R. 2926(a)		
8:43G-19.35-19.53	Hospital licensure: newborn care physical plant standards	21 N.J.R. 3642(a)		
8:43G-20.3, 20.5	Employee health (advisory)	21 N.J.R. 2173(a)		
8:43G-21.3, 21.6, 21.8, 21.10, 21.12, 21.14, 21.16	Oncology (advisory)	21 N.J.R. 2926(a)		

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8:43G-22.4, 22.7, 22.11, 22.18, 22.21	Pediatrics (advisory)	21 N.J.R. 2926(a)		
8:43G-23.5, 23.7, 23.11	Pharmacy (advisory)	21 N.J.R. 1626(a)		
8:43G-24.5, 24.7, 24.14	Plant maintenance and fire and emergency preparedness (advisory)	21 N.J.R. 2926(a)		
8:43G-26.4, 26.6, 26.8, 26.10, 26.13	Psychiatry (advisory)	21 N.J.R. 2926(a)		
8:43G-27.4, 27.6	Quality assurance (advisory)	21 N.J.R. 1630(a)		
8:43G-28.3, 28.4, 28.6, 28.9, 28.11, 28.15, 28.17, 28.21	Radiology (advisory)	21 N.J.R. 2174(a)		
8:43G-29.2, 29.4, 29.7, 29.11, 29.14, 29.16, 29.18, 29.22	Physical and occupational therapy (advisory)	21 N.J.R. 2926(a)		
8:43G-30.4, 30.7, 30.10, 30.12	Renal dialysis (advisory)	21 N.J.R. 2926(a)		
8:43G-30.13-30.17	Acute renal dialysis services: physical plant requirements	21 N.J.R. 3406(a)		
8:43G-31.4, 31.6, 31.8, 31.10, 31.13	Respiratory care (advisory)	21 N.J.R. 2926(a)		
8:43G-32.6, 32.8, 32.15, 32.17, 32.19	Same-day stay (advisory)	21 N.J.R. 2177(a)		
8:43G-33.4, 33.5, 33.7	Social work (advisory)	21 N.J.R. 1631(a)		
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8:43G-35.3	Postanesthesia care: administrative correction	_____	_____	22 N.J.R. 1265(b)
8:43G-35.5, 35.8	Postanesthesia care (advisory)	21 N.J.R. 2926(a)		
8:45	Clinical laboratory services: licensure and charges	21 N.J.R. 3708(b)	R.1990 d.145	22 N.J.R. 846(a)
8:57	Reportable communicable diseases and immunization requirements	21 N.J.R. 3897(a)		
8:57-2	Reporting of AIDS and HIV infection	21 N.J.R. 3905(a)		
8:57-3.1, 3.2	Reportable occupational and environmental diseases and poisonings	21 N.J.R. 3907(a)		
8:57-6	Cancer Registry (recodify to 8:57A)	21 N.J.R. 3909(a)		
8:59-1.3, 5.3, 8.10, 9.2, 9.3, 11.1	Worker and Community Right to Know: administrative corrections	_____	_____	22 N.J.R. 847(a)
8:59-App. A, B	Worker and Community Right to Know: preproposed Hazardous Substance List and Special Health Hazard Substance List	21 N.J.R. 1194(a)		
8:60	Asbestos training courses	22 N.J.R. 736(a)		
8:66-1.1	Intoxicated Driving Program	22 N.J.R. 1024(a)		
8:66-1.1; 8:66A	Intoxicated Driving Program/Intoxicated Driver Resource Center	21 N.J.R. 3283(a)	R.1990 d.135	22 N.J.R. 848(a)
8:66A-1.1	Intoxicated Driving Program: administrative correction	_____	_____	22 N.J.R. 995(b)
8:71	Interchangeable drug products (see 21 N.J.R. 2107(c), 2996(a))	21 N.J.R. 662(a)	R.1989 d.575	21 N.J.R. 3665(a)
8:71	Interchangeable drug products (see 21 N.J.R. 2997(a), 3664(a), 22 N.J.R. 214(b))	21 N.J.R. 1790(a)	R.1990 d.192	22 N.J.R. 1137(a)
8:71	Interchangeable drug products (see 22 N.J.R. 214(c))	21 N.J.R. 3292(a)	R.1990 d.191	22 N.J.R. 1136(b)
8:71	Interchangeable drug products	21 N.J.R. 3710(a)	R.1990 d.190	22 N.J.R. 1136(a)
8:71	Interchangeable drug products	21 N.J.R. 3711(a)		
8:71	Interchangeable drug products	22 N.J.R. 596(a)		

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9:2	Board administrative policies and programs	22 N.J.R. 749(a)		
9:2-14	Student immunization requirements	21 N.J.R. 3605(a)	R.1990 d.189	22 N.J.R. 1137(b)
9:4-1.3, 1.9, 1.10, 2.1-2.15, 7.5	County community colleges: governance and administration	21 N.J.R. 1269(a)	R.1990 d.153	22 N.J.R. 841(c)
9:4-2.4	County community colleges: code of ethics	22 N.J.R. 755(a)		
9:4-7.6	Evaluation of community college presidents	21 N.J.R. 2697(a)		
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10:37-7.8	Community mental health services: fee collection	21 N.J.R. 3221(a)		
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10:44B	Community care residences for developmentally disabled	22 N.J.R. 756(a)		
10:46	Developmental disability services: determination of eligibility	21 N.J.R. 3712(a)		
10:46	Developmental disability services: public hearings regarding determination of eligibility	22 N.J.R. 764(a)		
10:49-1.10	Medicaid/Medicare claims processing	22 N.J.R. 117(a)		
10:52	Manual for Hospital Services	21 N.J.R. 3911(a)	R.1990 d.157	22 N.J.R. 799(b)
10:53	Manual for Special Hospital Services Coverage	22 N.J.R. 765(a)		
10:55	Prosthetic and Orthotic Services Manual	22 N.J.R. 4(b)	R.1990 d.194	22 N.J.R. 1140(a)
10:60-4	Home Care Expansion Program	22 N.J.R. 597(a)		
10:63-1.2-1.8, 1.14, 1.16, 3.3, 3.8, 3.9	Long-term care (nursing) facilities: patient care and reimbursement	22 N.J.R. 118(a)		
10:63-1.15	Long-term care facilities: Medicaid Program requirements and sanctions	22 N.J.R. 5(a)		
10:63-1.16	Long-term care facilities: preproposal concerning pre-admission screening of Medicaid patients	21 N.J.R. 2773(a)		
10:69A-1.2, 6.2	Pharmaceutical Assistance to Aged and Disabled: income standards	21 N.J.R. 3047(a)	R.1990 d.182	22 N.J.R. 953(a)
10:70-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:71-4.5-4.9, 5.4, 5.6, 5.7	Medicaid Only Program: eligibility determinations for long-term care	22 N.J.R. 7(a)		
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only eligibility computation amounts	22 N.J.R. 251(a)	R.1990 d.177	22 N.J.R. 954(a)
10:72-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:81-11.9	Paternity determination services for non-AFDC clients	22 N.J.R. 1053(a)		
10:81-14.18	REACH program: post-AFDC child care	22 N.J.R. 136(a)	R.1990 d.206	22 N.J.R. 1140(b)
10:81-14.18, 14.18A, 14.18B	REACH post-AFDC sliding fee scales	22 N.J.R. 1054(a)		
10:83-1.11	Supplemental Security Income payment levels	22 N.J.R. 64(a)	R.1990 d.149	22 N.J.R. 800(a)
10:85-3.3	General Assistance: income and eligibility	21 N.J.R. 836(a)	Expired	
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10:89	Home Energy Assistance	22 N.J.R. 599(a)		
10:91	Commission for the Blind and Visually Impaired: operations and procedures	21 N.J.R. 2753(a)		
10:95	Repeal (see 10:91)	21 N.J.R. 2753(a)		
10:99	State Use Program for blind and severely handicapped	22 N.J.R. 766(a)		
10:121	Adoption of children	21 N.J.R. 3047(b)		
10:121	Adoption of children: extension of comment period	22 N.J.R. 310(a)		
10:123-1	Financial eligibility for Social Services Program	21 N.J.R. 2438(a)		
10:123-1	Financial eligibility for services through Social Services Block Grant program: extension of comment period	22 N.J.R. 310(b)		
10:125	Youth and Family Services capital funding program	21 N.J.R. 1514(a)		
10:125	Youth and Family Services capital funding program: reopening of public comment period	22 N.J.R. 766(b)		
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10A:9-4	Reduced custody consideration	21 N.J.R. 3050(a)	R.1990 d.195	22 N.J.R. 1143(a)
10A:16-5.2, 5.6	Medical and health services: guardianship of an adult inmate	21 N.J.R. 2851(a)		
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10A:18-2.6	Incoming correspondence: inspection and identification	22 N.J.R. 147(a)		
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10A:22-2.6	Release of confidential inmate or parolee records	22 N.J.R. 898(a)		
10A:31	Adult county correctional facilities	21 N.J.R. 2853(a)	R.1990 d.140	22 N.J.R. 801(a)
10A:31	Adult county correctional facilities: public hearing	21 N.J.R. 3411(b)		
10A:32	Juvenile detention facilities	22 N.J.R. 313(a)	R.1990 d.208	22 N.J.R. 1265(c)

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10A:71-1.3, 3.2, 3.21, 7.18	Parole Board rules	22 N.J.R. 899(a)		
10A:71-3.21	Board panel action: administrative correction			22 N.J.R. 1265(d)

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11:1-14.1	Insurance Producer Property and Casualty Advisory Committee	22 N.J.R. 15(b)		
11:1-24	Use of credit cards to pay premiums	21 N.J.R. 3418(b)		
11:1-27	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:1-28	Formation of property and casualty insurance corporation or reciprocal insurance exchange	21 N.J.R. 3607(a)	R.1990 d.162	22 N.J.R. 954(b)
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11:1-32	Exportable list of surplus lines: hearing and promulgation procedures	22 N.J.R. 314(b)		
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11:2-25	Insurer tie-ins	21 N.J.R. 3053(a)		
11:2-27	Personal lines policy form standards	21 N.J.R. 3421(a)		
11:2-28	Credit for property/casualty reinsurance	21 N.J.R. 3625(a)		
11:2-29	Orderly withdrawal of insurance business	21 N.J.R. 3622(a)		
11:2-29	Orderly withdrawal of insurance business: extension of comment period	22 N.J.R. 15(c)		
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11:3-8.2, 8.4	Nonrenewal of automobile policies	22 N.J.R. 316(a)		
11:3-8.4	Nonrenewal of automobile policies: administrative correction and extension of comment period	22 N.J.R. 769(a)		
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11:3-19	Multi-tier and good driver rating plans	21 N.J.R. 3721(a)		
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11:3-25.4	Residual market equalization charges: suspension of certain changes to N.J.A.C. 11:3-25.4; new public comment period	21 N.J.R. 2208(a)		
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11:3-32	Out-of-state vehicles: certification of mandatory liability coverage	22 N.J.R. 1040(a)		
11:4-9	Life and health insurance: unfiled policy forms	21 N.J.R. 1492(a)		
11:4-11.6	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
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11:4-18.4, 18.5	Individual health insurance rate filings	21 N.J.R. 3428(a)		
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11:5-1.28	Approved real estate schools	22 N.J.R. 777(a)		
11:13-6	Commercial insurance: rating plans for individual risk premium modification	21 N.J.R. 3430(a)		
11:13-7	Commercial lines policy forms	21 N.J.R. 3057(a)		
11:13-7	Commercial lines policy forms: extension of comment period	21 N.J.R. 3422(a)		
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12:19-1	Unemployment Compensation and Temporary Disability: program definitions	22 N.J.R. 605(a)		
12:45-1	Vocational Rehabilitation Services: procedures and standards	22 N.J.R. 1045(c)		
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12:100-5.2	Public employee safety and health: excavations	22 N.J.R. 607(a)	R.1990 d.216	22 N.J.R. 1270(b)
12:102-1	Field sanitation for seasonal farm workers	21 N.J.R. 2224(b)		
12:120	Asbestos training courses	22 N.J.R. 736(a)		
12:235-14	Workers' compensation: uninsured employer's fund	21 N.J.R. 3852(a)		

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12A:31-1	Development Authority for Small Businesses, Minorities' and Women's Enterprises: micro-loan program	22 N.J.R. 608(a)		
12A:31-2	Development Authority: loan guarantee program	22 N.J.R. 610(a)		
12A:31-3	Development Authority: direct loans	22 N.J.R. 612(a)		
12A:61	Energy emergencies (formerly at 14A:2)	21 N.J.R. 1272(a)		
12A:80-1	Urban Development Corporation: economic development programs	22 N.J.R. 780(a)		
12A:81	Repeal (see 12A:80-1)	22 N.J.R. 780(a)		
12A:82	Repeal (see 12A:80-1)	22 N.J.R. 780(a)		

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13:21-15.3	Long-term leasing of motor vehicles: business licensure	21 N.J.R. 3853(a)		
13:22	Repeal (see 13:62)	21 N.J.R. 3646(a)	R.1990 d.175	22 N.J.R. 965(a)
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13:25	Motorized bicycles	22 N.J.R. 323(a)	R.1990 d.210	22 N.J.R. 1270(c)
13:27	State Board of Architects rules	22 N.J.R. 18(a)	R.1990 d.165	22 N.J.R. 974(a)
13:27-8.6	Landscape architect certification: experience requirement	22 N.J.R. 325(a)		
13:29	Board of Accountancy rules	22 N.J.R. 1042(a)		
13:30	Board of Dentistry rules	22 N.J.R. 149(b)	R.1990 d.205	22 N.J.R. 1145(a)
13:30-8.2, 8.11	Parenteral conscious sedation in dental practice	21 N.J.R. 3060(a)	R.1990 d.174	22 N.J.R. 976(a)
13:30-8.3	Use of general anesthesia in dental practice	21 N.J.R. 3062(a)	R.1990 d.173	22 N.J.R. 975(a)
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 783(a)		
13:30-8.12	Board of Dentistry: accuracy of dental insurance forms	22 N.J.R. 153(a)		
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13:33	Practice of ophthalmic dispensers and technicians	22 N.J.R. 154(a)	R.1990 d.204	22 N.J.R. 1148(a)
13:34-1.1	Marriage counselor examination fee	21 N.J.R. 3854(a)	R.1990 d.152	22 N.J.R. 831(a)
13:35-6.2	Pronouncement and certification of death	22 N.J.R. 154(b)		
13:35-6.3	Podiatric trainee: countersigning of orders and prescriptions	22 N.J.R. 905(a)		
13:35-6.5	Standards for patient records in medical practice	21 N.J.R. 3253(a)	R.1990 d.176	22 N.J.R. 978(a)
13:36-3.5, 3.6, 3.7	Mortuary science: examination requirements and review procedure	21 N.J.R. 1820(a)		
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13:39A-5.1	Licensure of foreign-trained physical therapists: extension of comment period	22 N.J.R. 326(a)		
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13:44-2.16	Duplicate registration of veterinary practice	22 N.J.R. 905(b)		
13:44-4.1	Board of Veterinary Medical Examiners fee schedule	22 N.J.R. 18(b)	R.1990 d.151	22 N.J.R. 831(b)
13:44C-7.2	Audiology and speech language pathology: practice exemptions	21 N.J.R. 2702(a)		
13:44C-7.2	Audiology and speech language pathology practice exemptions: extension of comment period	22 N.J.R. 327(a)		
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13:61	State Police: boat safety course	21 N.J.R. 3434(a)	R.1990 d.142	22 N.J.R. 831(c)
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