

NEW JERSEY REGISTER



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THE JOURNAL OF STATE AGENCY RULEMAKING

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 (Includes adopted rules filed through April 10, 1989)

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: FEBRUARY 21, 1989

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT MARCH 20, 1989

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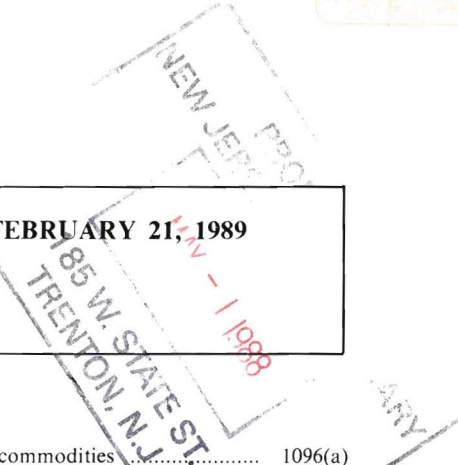
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Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **May 31, 1989**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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NEW JERSEY REGISTER

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

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RULE PROPOSALS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Relocation Assistance and Eviction Recovery of Relocation Assistance Costs Proposed New Rule: N.J.A.C. 5:11-8.5

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

Authority: N.J.S.A. 20:4-10, 20:4-4.1 and 20:4-4.2.

Proposal Number: PRN 1989-199.

Submit comments by May 31, 1989 to:

Michael L. Tickin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed new rule would require, as a condition of receipt of State relocation assistance funds, that municipalities or other displacing agencies bring such civil and criminal prosecutions as may be appropriate against property owners responsible for code violations that resulted in displacement so that relocation costs can be recovered from those owners in accordance with N.J.S.A. 20:4-4.1 and 20:4-4.2. The displacing agency is also to be required to bill the owners and file lien statements in accordance with the statute and to assign to the Department of Community Affairs an interest in the lien equal to the amount of the Department's share of the relocation assistance paid, and, at the Department's request, to assign its right to sue for recovery of relocation assistance to the Department if it does not want to bring suit itself. In any such case, the displacing agency would be paid its share of any recovered funds.

Social Impact

This proposed new rule would make more effective statutory provisions that are intended to recover relocation funds from those who made relocation for code enforcement necessary in the first place. Since the statute permits municipalities to place recovered relocation assistance funds not required to be paid back to the State in a local relocation fund, a concerted effort at recovery of these funds will make it possible to use the same appropriation to aid more people in need of relocation.

Economic Impact

The recycling of relocation assistance funds that would be made possible by a concerted recovery program would increase funds available for relocation while reducing the demand for State and local general revenue for relocation assistance purposes. There would clearly be a negative economic impact upon property owners who have a statutory liability for relocation payments but are currently not being required to make repayment.

Regulatory Flexibility Analysis

The effect of this proposed new rule would be to require collection of statutory debts to the public that are now often going uncollected. These rules require municipalities and other displacing agencies to take necessary steps to collect these debts. They do not impose any requirements upon small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The liability enforced by this rule upon property owners, some of whom may be small businesses, is statutorily imposed and may not be varied by regulation based upon owner size.

Full text of the proposal follows:

5:11-8.5 Recovery of relocation assistance costs

(a) Any displacing agency that receives a State grant-in-aid shall, as a condition of the receipt of that grant-in-aid, prosecute in a civil or criminal penalty action any real property owner who is or might

be, in the judgment of either the displacing agency or the Department, responsible for any housing or construction code violations that resulted in displacement and consequent eligibility for relocation assistance.

(b) Once there has been a final court adjudication in any civil or criminal penalty action brought under (a) above and paragraph (a) of section 1 of P.L. 1983, c. 536 (N.J.S.A. 20:4-4.1), and once the relocation assistance costs have been determined, the displacing agency shall promptly present a statement of relocation costs, indicating the date by which payment must be made, to the real property owner.

(c) In the event that payment is not made by the real property owner within 10 days of the date on which payment is due, interest on the unpaid balance shall accrue at the annual rate of 18 percent, pursuant to paragraph (b) of section 1 of P.L. 1983, c. 536 (N.J.S.A. 20:4-4.1) and the displacing agency shall prepare and file a lien statement pursuant to paragraph (c) of said section 1 of P.L. 1983, c. 536. The displacing agency shall assign to the Department an interest in the lien that is equal to the unrepaid amount of the grant-in-aid, plus accrued interest thereon. The displacing agency shall assist the Department, as may be required, in any foreclosure, by the Department, of the lien.

(d) The displacing agency shall pay to the Department, out of any funds recovered by it from the real property owner, a proportion of such recovered funds that is the same as the proportion of the total relocation assistance resulting from code enforcement at that owner's property that was paid by the Department.

(e) In the event that the displacing agency does not elect to bring a civil action to recover relocation assistance costs, pursuant to section 1 of P.L. 1984, c. 30 (N.J.S.A. 20:4-4.2), the displacing agency shall, at the request of the Department, assign its right to recovery of such funds to the Department. In the event of any recovery in any such case, the Department shall repay to the displacing agency a proportion of the recovered funds, exclusive of attorneys' fees and costs, that is the same as the proportion of the relocation assistance that was paid by the displacing agency from its own funds.

EDUCATION

(b)

STATE BOARD OF EDUCATION

Adult Education Monitoring and Funding

Proposed Amendments: N.J.A.C. 6:30-1.7, 2.3 and 2.6.

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:7C-1 et seq., 18A:49-1 through 8, 18A:50-12, 13 and 14, and the Adult Education Act; 20 U.S.C. §§1201 et seq.

Proposal Number: PRN 1989-198.

Submit comments by May 31, 1989 to:

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

The agency proposal follows:

Summary

Distribution of Funds

Amendments to the rules governing the distribution of Federal and State adult education funds are being proposed in order to clarify the elements of the funding formula and to allow these entitlement funds to be disbursed appropriately. The Department's amendments are offered to streamline the funding process for adult basic skills and high school

completion instructional programs. The following amendments allow the entitlement funds to be distributed in a more appropriate manner. The proposed amendments make the following changes in procedures for the distribution of funding.

N.J.A.C. 6:30-1.7 Monitoring process

The proposed amendment to N.J.A.C. 6:30-1.7 allows an approved application from a volunteer program to replace the contract.

N.J.A.C. 6:30-2.3 Application for funding

The proposed amendment to N.J.A.C. 6:30-2.3 establishes a time deadline for adult education programs to notify the Division of Adult Education of their interest in funding and to provide a projection of their anticipated needs. The amendment then requires the Director, Division of Adult Education, to notify each interested program by September 1 of the pre-budget year of their projected level of funding. Based on the September 1 projected level of funding, the agency must decide whether to submit a final application for funds by November 1 of the pre-budget year. Based on the final applications and the formula calculations, the programs will be notified of funding entitlements by January 2 of the pre-budget year. The amendment also includes a listing of the criteria of the funding formula.

N.J.A.C. 6:30-2.6 Monitoring elements and indicators

The proposed amendment to N.J.A.C. 6:30-2.6 replaces the requirement for a contract with a notification of funding, which will include scheduled dates for both program and financial reports.

Social Impact

The proposed amendments improve the funding process and transmittal of funds to eligible providers of adult education instructional programs. The earlier transmittal of funds may improve the delivery of services to the adult education participants by creating the potential for greater participation because final staffing commitments can be made at an earlier date.

Economic Impact

The proposed amendments allow the Division of Adult Education to provide funds to instructional programs on a more timely basis. Currently, funds are not provided until approximately halfway through the fiscal year. The change allows funds to be paid to agencies beginning in September of the program year.

Regulatory Flexibility Analysis

The proposed amendments are a result of the 1988 amendments to Public Law 100-297. They are being implemented for the first time with these amendments. Hence, there is no historical background with which to identify the exact numbers of small businesses likely to become involved in these arrangements. Businesses likely to be affected are educational consulting firms and private schools. Only a small number of these businesses will be affected. It is anticipated that no more than five or six applications will be submitted and all of those applicants may not fall into the category of a small business. Most school districts already supply this type of educational service themselves and such arrangements are not necessary for them. For those small businesses that do enter into a contractual agreement with a district to supply educational programs, there will be minimal recording, recordkeeping and compliance requirements. These reporting, recordkeeping and compliance requirements will not be burdensome on small businesses. The requirements are not extraordinary. They include those activities necessary in running an effective education program. Hence, no additional administrative or clerical staff would need to be hired by a small business since most of what is required would be part of daily bookkeeping and recordkeeping activity.

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

6:30-1.7 Monitoring process

(a) The Director, Division of Adult Education shall establish evaluation worksheets for the monitoring of adult education programs.

1. (No change.)

2. The Director, Division of Adult Education shall establish annually a monitoring schedule. Each program scheduled for monitoring shall be notified in advance by the Director, Division of Adult Education, and dates for such monitoring visits shall be established with the concurrence of the chief school administrator of the district

or agency director with notification to the appropriate county office of education. **For the purpose of this section, "agency, institution and organization" shall be referred to as "agency."**

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

(d) When monitoring a program sponsored by a voluntary agency, the monitoring team shall evaluate the program based on **the application approved by** [the terms and conditions of the contract entered into between the voluntary agency and] the New Jersey State Department of Education.

1. (No change.)

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

6:30-2.3 Application for funding

(a) Eligible agencies [, institutions and organizations] **entitled to program support** [which have been previously funded or intend to apply for funds for the first time] shall submit a statement of anticipated funding needs for the succeeding fiscal year[. These statements shall be submitted] to the Division of Adult Education by July 1 of the pre-budget year. **For the purpose of this section, "agency, institution and organization" shall be referred to as "agency."** **In this section, the phrase "pre-budget year" shall mean the school year prior to the school year to which a statement of anticipated funding needs, a tentative allocation, an application for funds, or a notification of funding makes reference.**

1. The Director, Division of Adult Education shall forward a notice of tentative allocation by September 1 of the pre-budget year to each agency which submitted a statement of anticipated funding needs.

(b) Eligible agencies[, institutions and organizations not previously funded] shall submit an application for funds in accordance with procedures established by the Division of Adult Education by [October] **November 1** of the pre-budget year. All applications will be reviewed and approved or disapproved for funding in accordance with **eligibility** criteria established in the State Plan for Adult Education pursuant to P.L. 91-230.

(c) [Amounts of grant awards] **Funding entitlements** for eligible agencies[, institutions and organizations which are approved for funding] shall be determined on a formula basis established by the Commissioner.

1. The formula for [grant awards] **determining funding for eligible agencies** for adult basic skills programming shall be based upon, **but not limited to, the following:**

[i. An analysis of the impact of funding for the last three years;
ii. A review of current demographic data relating to under-educated adults in the State of New Jersey; and
iii. A review of the proposed formula with practitioners in the field of adult education.]

i. Current demographic data related to under-educated adults in the State of New Jersey;

ii. Current demographic data related to each individual eligible agency; and

iii. Data submitted by the applicants including student enrollments and program completion based on attendance or GED passage.

(d) Eligible agencies[, institutions and organizations which are approved for funding] will receive a **notification of funding by January 2 of the pre-budget year.** [contract offers. Contracts will be approved by the Department of Education based on certification that contractual terms and conditions will be met.

(e) Agencies, institutions and organizations with approved contracts shall maintain financial and program records and submit all reports as required by the terms and conditions of their contracts.]

6:30-2.6 Monitoring elements and indicators

(a) The monitoring team shall examine the essential elements of the educational process in the program using the prescribed indicators of acceptable performance and documentation [as] **which follow[s]. For the purpose of this section, "agency, institution and organization" shall be referred to as "agency."**

1.-3. (No change.)

4. The attendance record maintenance element shall be rated acceptable upon documentation of performance in two indicators as follows:

i. (No change.)
 ii. The program director shall submit to the State Department of Education annually, [prior to] **on or before** July 15, student and staff record forms of each student participant and staff member employed in the program. The student record form will note level of program enrollment, hours of attendance during each month of program operation, demographic information, test information, and other data required to be compiled by Federal regulations. The program shall maintain backup data to verify entries made on student and staff record forms. Documentation shall be properly maintained record forms and data to verify entries.

5.-9. (No change.)
 10. The financial element shall be rated acceptable upon documentation of performance in two indicators as follows:

i. (No change.)
 ii. The district or agency shall maintain appropriate fiscal records of all monies [allocated] **provided** by the State [through an approved contract] and shall submit all reports in a timely fashion as [required by the terms and conditions of the contract] **specified in the notification of funding**. Documentation shall include budgetary accounts and receipt of all reports by [reporting] **scheduled** deadline dates.

ENVIRONMENTAL PROTECTION

(a)

**DIVISION OF COASTAL RESOURCES
 Notice of Extension of Comment Period
 Coastal Permit Program Rules
 Proposed Readoption: N.J.A.C. 7:7**

Take notice that the Department of Environmental Protection is extending until May 7, 1989 the period for submission of written comments on the proposed readoption of the Coastal Permit Program rules. The notice of proposed readoption was published on February 21, 1989 in the New Jersey Register at 21 N.J.R. 369(a). Please refer to the notice of proposal (DEP Docket No. 005-89-01) for further information.

Submit written comments by May 7, 1989 to:
 Judeth A. Piccinini, Esq.
 Division of Regulatory Affairs
 Department of Environmental Protection
 CN 402
 Trenton, New Jersey 08625

(b)

**DIVISION OF WATER RESOURCES
 Bureau of Marine Water Classification and Analysis
 Shellfish-Growing Water Classification
 Proposed Amendments: N.J.A.C. 7:12-1.1, 2.1, 3.2,
 4.1, 4.2, 5.1, 9.1, 9.7, 9.8, 9.9 and 9.12**

Authorized By: Christopher J. Daggett, Commissioner,
 Department of Environmental Protection.
 Authority: N.J.S.A. 13:1D-9 and 58:24-1 et seq.
 DEP Docket Number: 018-89-04.
 Proposal Number: PRN 1989-219.

Submit written comments by May 31, 1989 to:
 Martin J. McHugh, Esq.
 Division of Regulatory Affairs
 Department of Environmental Protection
 CN 402
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection (Department) proposes to amend its rules on the classification of certain shellfish beds as the result of surveys conducted by the Bureau of Marine Water Classification and Analysis in the Division of Water Resources.

The survey work consists of the collection and analysis of water samples, the inventory of actual and potential sources of pollution, and hydrographic studies of flow patterns which distribute pollution. These surveys are conducted in accordance with applicable State and Federal (Food and Drug Administration (FDA)) guidelines and regulations as described in the FDA's national Shellfish Sanitation Program manual of operations (Part I—Sanitation of Shellfish Growing Areas) available from the FDA, Washington, D.C. The FDA further requires that each state annually appraise the quality of those waters classified as Approved for the harvest of shellfish. New Jersey conducts investigatory work and research and, pursuant to N.J.S.A. 58:24-1 et seq., amends the rules annually.

The proposed amendments fall into four categories: format and restructuring; changes in water quality; enhanced monitoring; and clarification of existing rules.

The proposed amendments will reclassify approximately 15,186 acres with a net gain of approximately 14,946 acres which will be open to harvest. The names of the waterways and number of acres reclassified are listed below in general terms.

CHART #	AREA	ACTION	ACRES
1&2	Raritan Bay	Seasonal Special Restricted to Special Restricted	13,000
6	Tuckerton Cove	Seasonal to Approved	112
7	Reed Bay	Seasonal to Special Restricted	10
7	Shelter Island Bay	Special Restricted to Seasonal	57
8	Great Egg Harbor Bay	Seasonal to Approved	706
8	Ludlam Bay	Special Restricted to Approved	285
8	Townsend Sound and Mill Thorofare	Seasonal to Approved	243
9	Great Channel	Special Restricted to Seasonal	248
9&10	Atlantic Ocean	Prohibited to Approved Approved to Prohibited	295 230

In addition to the above described reclassifications of shellfish growing waters, these amendments contain a revision to the temperature requirements, for the purging of shellfish, found in the following sections: the Relay Program, N.J.A.C. 7:12-9.7; the Transfer Program, N.J.A.C. 7:12-9.8; the Transplant Program, N.J.A.C. 7:12-9.9; and the Seed Oyster Program, N.J.A.C. 7:12-9.12. Purging is the process of discharging contaminants from shellfish through their natural pumping action. The change to sections listed above lowers the minimum water temperature requirement for purging during the minimum 30-day period from 55 degrees Fahrenheit to 50 degrees Fahrenheit. This decrease is warranted on the basis of investigations conducted by the Bureau of Marine Water Classification and Analysis in response to a request by the shellfish industry. The change in temperature from 55 degrees Fahrenheit to 50 degrees Fahrenheit represents an increase in the recognized temperature range at which shellfish are able to maintain substantial activity and effectively purge themselves of contaminants. This temperature change, therefore, results in the changes to the seasonal dates for the various harvesting programs set forth in these amendments. The investigations performed by the Bureau of Marine Water Classification and Analysis confirmed that these revisions were justified and appropriate.

The proposed amendments also contain a change to the suspension provisions found at N.J.A.C. 7:12-9.1. This change would, in general, give the Department the discretion to suspend the Special Permit of any permit holder who violates a permit condition or these rules; previously, such suspension was mandatory in all cases. Suspensions would only be mandatory when a violation of a permit condition or these rules creates a direct threat to human health. While retaining the provision for holding post-suspension hearings on an expedited basis, the requirement that they be held within 10 days of a participant's request has been deleted as not affording adequate time preparation by the parties.

Social Impact

In addition to the more than 23,000 persons licensed to harvest shellfish, the adoption of these amendments affects the far greater number of consumers who utilize the shellfish harvested from New Jersey waters. While the downgrading of some waters may, in limited cases, reduce

recreational opportunities, the overall impact of the proposed amendments increases the availability of shellfish to shellfishermen and consumers. The continued monitoring efforts undertaken by the Department insure that the State's shellfish resource, which is available to both recreational and commercial harvesters and consumers, remains a wholesome food product.

N.J.A.C. 7:12-9.1 in its current form requires the Department to immediately suspend a special permit for any violation of a permit condition or rule. The removal of mandatory Special Permit suspensions will give the Department discretion in those situations where there is no threat to public health, thereby allowing continued operations under permit unless suspension is otherwise warranted.

The deletion of language in N.J.A.C. 7:12-9.1 regarding the 10-day time requirement for the holding of expedited hearings is proposed on the basis that it is unnecessary to require an aggrieved party to be prepared to attend a hearing within 10 days of his request for a hearing. Frequently, an aggrieved party cannot be prepared within this 10-day time period. In addition, due process concerns are satisfied by the requirement that will remain in N.J.A.C. 7:12-9.1, that is, hearings will be held on an expedited basis.

Economic Impact

The shellfish growing water reclassifications contained in these amendments represent an increase in the availability of harvest water open to shellfishermen. The decrease in minimum water temperature requirements for purging of shellfish will increase the availability of shellfish for harvest in accordance with N.J.A.C. 7:12-9.7 by shortening the relay period. The overall economic impact of these regulatory changes is favorable to the shellfish industry while allowing the Department to fulfill its statutory responsibility to protect the public health.

Environmental Impact

The continuous monitoring of New Jersey's shellfish growing waters benefits the State not only by affording protection from shellfish related disease, but also by serving as an environmental yardstick by which the progress of pollution abatement programs can be measured.

In addition, the demand for increased recreational, residential and commercial facilities in New Jersey's coastal zone continues to present a dilemma to environmental planners. The level of discord associated with the conflicting interests that depend upon publicly owned and managed natural resources can only be expected to increase. Therefore, the need for an objective method of evaluating the impact of man's activities upon complex estuarine and marine systems is increasing. The criteria associated with the National Shellfish Sanitation Program, which forms the basis of these water quality classifications, are but one suggested method that can be utilized to quantify the impact of the development.

The proposed amendments represent a tangible measurement of the quality of New Jersey's surface waters as well as providing a historical record for future comparison. The adoption of these amendments will exert a positive environmental impact primarily by sanctioning the extensive monitoring efforts that precede the specific changes recommended herein.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these rules will not impose reporting, recordkeeping or other compliance requirements on small business, because these amendments do not impose such requirements on any person.

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

7:12-1.1 General provisions

(a)-(h) (No change.)

(i) Charts designating growing water classifications as hereinafter referenced are available from the Bureau of Marine Water Classification and Analysis Offices, Marine Police Stations, and Shellfisheries Field Offices at Bivalve and Nacote Creek. However, all persons are cautioned that emergency closures may be necessary and may not be charted. These Shellfish Growing Water Classification Charts are developed from Nautical Charts Number 12327 New York Harbor, 80th Edition, December 29, 1984; Number 12324 Intracoastal Waterway, Sandy Hook to Little Egg Harbor, 23rd Edition, June 1, 1985; Number 12316 Intracoastal Waterway, Little Egg Harbor to Cape May, 22nd Edition, May 4, 1985; and Number

12304 Delaware Bay, 30th Edition, March 16, 1985. The Department of Environmental Protection hereby condemns all shellfish growing waters as described in this chapter and other places from which shellfish are or may be taken as listed in N.J.A.C. 7:12-9 at all times of the year, except when otherwise noted in N.J.A.C. 7:12-4 [5] and 6.

(j) (No change.)

7:12-2.1 Shellfish growing water classification—Prohibited

(a) The following shellfish growing waters are classified Prohibited:

1.-2. (No change.)

3. Monmouth-Middlesex County area (Note that a portion is also designated as a Special Restricted area [and a portion is also designated as a Seasonal Special Restricted area]. See N.J.A.C. 7:12-3[and 5]):

i.-vi. (No change.)

4.-19. (No change.)

20. Atlantic Ocean.

i.-ix. (No change.)

x. All of the ocean waters inshore of a line beginning at the base of the western jetty of Cape May Inlet and continuing along that jetty in a southeasterly direction to the light at the end of the jetty charted as **FI G 4 sec 37ft 7M HORN**, then bearing approximately **295 degrees T (reciprocal 115 degrees T)** to the water tank located on the United States Coast Guard Training Center, City of Cape May, with coordinates of latitude **38 degrees 56.8 minutes N.**, and longitude **74 degrees 53.6 minutes W.**, and terminating;

xi. All of the waters of the Cold Spring Inlet Hopper and Bucket Dredge Disposal Area contained within a line beginning at an offshore point with coordinates of latitude **38 degrees 55.9 minutes N.**, and longitude **74 degrees 53.1 minutes W.**, and bearing approximately **156 degrees T** for approximately **0.35 nautical miles** to a point with coordinates of latitude **38 degrees 55.6 minutes N.**, and longitude **74 degrees 52.9 minutes W.**, then bearing approximately **248 degrees T** for approximately **0.5 nautical miles** to a point with coordinates of latitude **38 degrees 55.4 minutes N.**, and longitude **74 degrees 53.5 minutes W.**, then bearing approximately **332 degrees T** for approximately **0.3 nautical miles** to a point with coordinates of latitude **38 degrees 55.7 minutes N.**, and longitude **74 degrees 53.7 minutes W.**, then bearing approximately **66 degrees T** for approximately **0.5 nautical miles** to its point of origin and terminating; and

[x.] xii. All those waters inshore of a line beginning at the water tank located on the United States Coast Guard Training Center, City of Cape May, with coordinates of latitude **38 degrees 56.8 minutes N.**, and longitude **74 degrees 53.6 minutes W.**, and bearing approximately **151 degrees T** for approximately **[0.5] 0.25 nautical miles** from the shoreline to a point with coordinates of latitude **38 degrees [56.0] 56.2 minutes N.**, and longitude **74 degrees [53.0] 53.2 minutes W.**, then parallel along the shoreline in a westerly direction, **[0.5] 0.25 nautical miles** offshore, for approximately **1.4 nautical miles** until it intersects a line bearing **166 degrees T** from the water tank located on the corner of Madison Avenue and Columbia Avenue, City of Cape May, with coordinates of latitude **38 degrees 56.2 minutes N.**, longitude **74 degrees 54.9 minutes West**. This point of intersecting lines is approximately **[0.5] 0.25 miles** from the shoreline and has coordinates of latitude **38 degrees [55.3] 55.6 minutes N.**, longitude **74 degrees [54.6] 54.7 minutes West**. Then proceeding in a southeasterly direction along that line for approximately **[1.5] 1.75 nautical miles** to a point with coordinates of **38 degrees 53.9 minutes N.**, longitude **74 degrees 54.2 minutes W.**, then proceeding in a westerly direction two nautical miles offshore for approximately **5.7 nautical miles** until it intersects a line bearing approximately **033 degrees T** connecting a point with coordinates of latitude **38 degrees 54.3 minutes N.**, longitude **75 degrees 01.7 minutes W.** (generally marked by a buoy charted as **R"2" FI R 4s**) and a point with coordinates of latitude **38 degrees 56.0 minutes N.**, longitude **75 degrees 00.3 minutes W.** (generally marked by a buoy charted as **R "4" FI R 2.5sec** marking the southwest side of Crow Shoal). This point of intersecting lines has coordinates of latitude **38 degrees 55.5 minutes N.**, longitude **75 degrees 0.7 minutes West**. Then proceeding in a northeasterly direction for approximately **0.5 nautical miles** to

the point with coordinates of latitude 38 degrees 56.0 minutes N., longitude 75 degrees 00.3 minutes W., then along the line described in (a)18i above to the Cap May Point Lighthouse ([FL] FI 15 sec 165 ft. 24M) and terminating. This closure adjoins those Prohibited waters described in (a)18i above.

7:12-3.2 Shellfish growing waters that are classified as Special Restricted

(a) The following shellfish growing waters are classified as Special Restricted:

[1. All of Sandy Hook Bay bounded by a line beginning at the south end of that pier maintained by the United States Navy in Leonardo, New Jersey (Department of Navy, Naval Weapons Station Earle, NWS-Earle where it intersects the shoreline and following the shoreline in a generally southeasterly direction until it reaches the structure forming the western extent of the Atlantic Highlands Municipal Harbor, and then following the western edge of this structure in a northerly direction to its northernmost extent, and then connecting this structure with the breakwater (this breakwater or stonepile forms the northern boundary of the municipal harbor) and following the northern side of the breakwater in an easterly direction to its easternmost extent, where it is marked by the navigational marker designated as 'Flashing light 4 second 29ft 8M' (FI 4 sec 29ft 8M) and then bearing approximately 201 degrees T to the mainland, and then following the shoreline in a generally southeasterly direction to the westernmost extent of the Route 36 highway bridge spanning the Shrewsbury River and then following the northern edge of that bridge to where it intersects the shoreline on Sandy Hook, and then following the shoreline in a generally northerly direction until it intersects a line connecting Sandy Hook light, Fixed light 88ft 19M (F 88ft 19M) to the northernmost extent of the NWS-Earle pier, and following that line bearing approximately 262 degrees T to the northernmost extent of the NWS-Earle pier and then following the westernmost side of the pier in a southwesterly direction to this line's point of origin where the pier intersects the shoreline. (Note: This designation of Special Restricted waters adjoins those waters defined as Seasonal Special Restricted in N.J.A.C. 7:12-5 and as Special Restricted in N.J.A.C. 7:12-3.2(a)2.)]

1. All those waters contained within a line beginning on the northernmost point of Conaskonk Point near Union Beach, New Jersey and bearing approximately 345 degrees T to Sequine Point at Princes Bay, Staten Island, New York, until it intersects the New York-New Jersey boundary, then along that boundary in an easterly direction until it intersects the Raritan Bay East Reach Channel, then along the southwest boundary of that channel in a southeasterly direction (approximate bearing 106 degrees T) to the channel marker designated as GR "TC" Interrupted Quick Flashing Green light (GR "TC" I QK FI G) located at the intersection of Raritan Bay East Reach, Sandy Hook Channel and Terminal Channel, and then bearing approximately 098 degrees T to the navigation aid designated as "Equal Interval 6 second and vertical Beam light 38ft 15M Bell" (E. Int. 6 sec and VB 38ft 15M Bell) located on the shore at Sandy Hook Point, then proceeding in a generally southerly direction following the western shoreline of Sandy Hook to the westernmost extent of the Rt. 36 highway bridge spanning the Shrewsbury River and then following the northern edge of that bridge to where it intersects the shoreline on the mainland and then following the shoreline in a generally northwesterly direction until it intersects a line bearing approximately 201 degrees T from the navigational marker designated as Flashing light 4 second 29ft 8M (FI 4 sec 29ft 8M) marking the easternmost extent of the Atlantic Highlands Municipal Yacht Basin's breakwater (this stonepile forms the basin's northern boundary), and then along that line in a northerly direction to the marker designated as a Flashing light 4 second 29ft 8M and following the northern side of the breakwater in a westerly direction until it reaches the structure forming the western boundary of the Yacht Basin, and then following the western edge of this structure in a southerly direction to the mainland, then following the shoreline in a generally northwesterly direction to the northernmost point of land on Point Comfort (Keansburg), then bearing approximately 272 degrees T to the northernmost point of land on Conaskonk Point (Union Beach), its point of origin.

2.-17. (No change.)

18. Tuckerton area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4[.]); All of Tuckerton Creek and tributaries thereof north and west of a straight line connecting the west and east banks of the cove formed by the alignment of the range (Department maintained) located on the west bank of Tuckerton Cove and the telephone pole (P-21377) on the east bank. When the range is aligned, the bearing it creates is approximately [047] 049 degrees T (reciprocal [227] 229 degrees T).

19.-20. (No change.)

21. Reed Bay area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i. All of the unnamed cove southwest of Somers Cove (adjacent to the Seasonal area described in N.J.A.C. 7:12-4.1(a)4ii) west of a line connecting two Department maintained markers.

Redesignate existing i.-ii. as ii.-iii. (No change in text.)

22.-27. (No change.)

28. Stathmere and Sea Isle City area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i. All of Maple Swamp Creek;

[i. That portion of Ludlam Bay lying west of a line beginning at the Department maintained marker on the southern shore of Ludlam Bay and bearing approximately 330 degrees T to a Department maintained marker on an unnamed island then bearing approximately 245 degrees T to the Department maintained range marker on the mainland;]

ii. That portion of Ludlam Bay lying south and west of a line beginning at a Department maintained marker on the shoreline of the barrier island and bearing approximately 336 degrees T to marker R "118" then bearing approximately 232 degrees T to a Department maintained marker on the mainland and terminating.

Redesignate existing ii.-iv. as iii.-v. (No change in text.)

29. (No change.)

[30. Stone Harbor area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i. All of Gull Island Thorofare and Muddy Hole contained within a line from the mouth of Jugs Creek and continuing along the shoreline of Great Channel, across the mouth of Oldman Creek, continuing along the shoreline and across the mouth of Stoney Harbor Creek and along the Stone Harbor shoreline to the Stoney Harbor Boulevard Bridge, then along the bridge and along the western shoreline of Muddy Hole to the Department maintained marker at its mouth, then bearing approximately 022 degrees T to the point of origin at the mouth of Jugs Creek.]

Renumber 31.-34. as 30.-33. (No change in text.)

7:12-4.1 Seasonally approved growing waters (Approved November 1 through April 30 yearly, Special Restricted May 1 through October 31, yearly)

(a) The following shellfish growing waters designated on the charts referred to in N.J.A.C. 7:12-1.1 shall be Special Restricted for the harvest of shellfish from May 1 through October 31 yearly and Approved for the harvest of shellfish from November 1 through April 30 yearly:

1.-3. (No change.)

4. Absecon Bay-Absecon Channel Reed Bay area: Seasonal-Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30, yearly:

i. (No change.)

[ii. All waters northwest of a line from a Department maintained marker southwest to Somers Cove and bearing approximately 215 degrees T to another Department maintained marker on an unnamed point of land and terminating.]

ii. All those waters in the unnamed cove (southwest of Somers Cove) from a Department maintained marker on the northern shoreline and bearing approximately 215 degrees T across the cove to another Department maintained marker and along that shoreline in a northerly direction to a Department maintained marker, then bearing approximately 005 degrees T to another Department maintained marker, then along the shoreline in a generally easterly direction to the point of origin and terminating.

5. (No change.)

6. Lakes Bay-Shelter Bay-Risley Channel Area: Seasonal-Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly.

i. All that portion of Lakes Bay, Shelter Bay and adjoining thorofares contained within a line from the Pleasantville Yacht Club and following the channel markers F1 G "15", F1 G "13", F1 G "11", F1 R "8" to F1 G "7", then bearing approximately 061 degrees T across the northernmost tip of a small unnamed island to Great Island, then along the shoreline of Great Island in a southerly direction to [its southwesternmost point, then bearing approximately 220 degrees T to the northernmost point of Jonas Island, then along the northwest shoreline of Jonas Island to its westernmost point, then bearing approximately 235 degrees T to the northernmost point of Pork Island,] a Department maintained marker (at the southwestern most point), then bearing approximately 216 degrees T to the northwestern tip of Shelter Island, then bearing approximately 206 degrees T to a Department maintained marker on an unnamed island then along the northern and western shoreline of the island to another Department maintained marker, then bearing approximately 245 degrees T to Jonas Island, then along the eastern shoreline, then along northern shoreline, then along western shoreline to a Department maintained marker, then bearing approximately 204 degrees T to Pork Island, then along the shoreline in a westerly direction to the base of the Ventnor-Margate Bridge, then bearing approximately 233 degrees T to the most northern point of land on Lone Cedar Island, then along the western and southern shoreline of Lone Cedar Island to a Department maintained marker, then bearing approximately 214 degrees T to the northwesternmost point of land on Dune Island, then along the western shore of Dune Island to its westernmost point, then bearing approximately 223 degrees T across Risley Channel to a Department maintained marker, then following the shoreline in a northerly direction to an unnamed thorofare, then following the southeast shoreline of that thorofare to a point of land adjacent to G "3" (at the junction with Broad Thorofare) then bearing approximately 350 degrees T across the thorofare to the point of land on the opposite bank, then along the shoreline in a northeasterly direction to its mouth at Risley Channel, then following the shoreline in a northerly direction and across the mouth of the next unnamed thorofare connecting Risley Channel and Scull Bay and continuing in a northerly direction along the shoreline of Dock Thorofare, including all of Mulberry Thorofare, then from the point of land on the north side of Mulberry Thorofare (at its mouth) bearing approximately 077 degrees T to the southernmost point of land on Kiah's Island, then along that shoreline in a northeasterly direction (approximately 2500 yards) to a Department maintained marker, then bearing approximately 340 degrees T to the opposite shoreline at the point of land on the east side of the mouth of the unnamed creek just east of Stillman Creek, then continuing in an easterly direction along the northern shoreline of Dock Thorofare, Lakes Channel and Lakes Bay to its point of origin at the Pleasantville Yacht Club and terminating.

7-8. (No change.)

[9. Sea Isle City Area: Seasonal-Condemed May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

i. All of Mill Thorofare and tributaries thereof, and portions of Townsend South north of a line from a Department maintained marker on the prominent point of land along the western shoreline of Townsend Sound and bearing approximately 105 degrees T to another Department maintained marker at the mouth of an unnamed tributary on the opposite shoreline.]

[10.]9. Great Sound area:

i. (No change.)

ii. All of Cresse Thorofare, Gull Island Thorofare, **Great Channel**, [Jugs] **Shark** Creek and Goths Creek contained within a line starting at a Department maintained marker on Halfmile Point, continuing along the shoreline of Cresse Thorofare in a southerly direction, across the mouths of Little Oyster and Oyster Creeks, continuing along the shoreline and across the mouth of Scotch Bonnet and continuing along the shoreline including Goths Creek, [to the Department maintained marker on the western shore at the mouth of Muddy Hole and then bearing approximately 022 degrees

T to and including Jugs Creek,] **continuing along the shoreline and across the mouth of Muddy Hole, continuing along the shoreline and across the second mouth of Muddy Hole to the Stone Harbor Boulevard Bridge, then along the bridge in a southeasterly direction to the Stone Harbor shoreline, then along the shoreline (excluding harbors and basins) in a northeasterly direction across the mouths of Stone Harbor Creek and Oldman's Creek, continuing along the shoreline including Shark Creek, then along that shoreline in a northerly direction along Sturgeon Hole to a Department maintained marker, then bearing approximately 290 degrees T to a Department maintained marker on Gull Island and continuing to the point of origin at Halfmile Point.**

[11.] 10. Delaware Bay area:

i.-v. (No change.)

vi. **Fishing Creek: Seasonal-Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:**

(1) **All of Fishing Creek; and**

Redesignate existing vi. as vii. (No change in text.)

7:12-4.2 Seasonally Approved Growing Waters (Approved January 1 through April 30 yearly, Special Restricted May 1 through December 31 yearly)

(a) The following shellfish growing waters, designated on the charts referred to in N.J.A.C. 7:12-1.1, shall be Special Restricted for harvest of shellfish from May 1 through December 31 yearly and Approved January 1 through April 30 yearly:

1.-4. (No change.)

5. Tuckerton area: Seasonal-Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All those waters of Tuckerton Cove [lying north and west of a straight line and south and east of] between the line described in N.J.A.C. 7:12-3.2(a) 18 [beginning at the southeasternmost point of land on Gaunt Point and bearing approximately 235 degrees T to the easternmost point of land on Thorofare Point where this line terminates] **and a line connecting the east and west banks of the cove formed by the alignment of the range (Department maintained) located on the west bank of the Tuckerton Cove and the telephone pole (P-35877) on the east bank. When the range is aligned, the bearing it creates is approximately 254 degrees T (reciprocal 74 degrees).**

6.-7. (No change.)

[8. Ocean City-Somers Point area: Seasonal-Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. Steelman Bay: All of Steelman Bay from a line beginning at a Department maintained marker on the southern shore of Steelman Bay and bearing approximately 306 degrees T, touching the shoreline of an unnamed island and continuing to a Department maintained marker on the opposite shore, then along the northern shoreline, including the first tributary, then continuing along the shoreline of Steelman Bay, across several tributaries and back to its origin at the Department maintained marker and terminating.

ii. Great Egg Harbor Bay, Great Egg Harbor River and Middle River: Seasonal Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

(1) All that portion of Great Egg Harbor Bay, Great Egg Harbor River and Middle River contained within a line beginning at the southwest tip of Drag Island and bearing approximately 266 degrees T through the south side base of the second electric tower (uncharted) to the northern-point at the mouth of the Tuckahoe River, then along the western shoreline of Great Egg Harbor River in a northwesterly direction to Middle River, then along the south shore of Middle River to the tributary leading to Swan Pond, then directly across Middle River and along the shore to Great Egg Harbor River, then along the shore of Great Egg Harbor River to Flashing Red 8 (F1 R "8") and bearing approximately 208 degrees T to a Department maintained marker at the mouth of an unnamed creek, then along the eastern shore of Great Egg Harbor River in a downstream direction to the north shore of Patcong Creek, then across the line marking the mouth of Patcong Creek described in N.J.A.C. 7:12-3.2(a)25, then along the north shore of Great Egg Harbor Bay and Drag Channel to the Garden State Parkway, then along the eastern side of the

Garden State Parkway of Drag Island, then along the shoreline in a westerly direction to its origin at the southwest tip where this line terminates.]

8. Great Egg Harbor River and Middle River: Seasonal Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All that portion of Great Egg Harbor River and Middle River contained within a line beginning at F1 R "4" and bearing approximately 215 degrees T to the western shoreline of Great Egg Harbor River and along that shoreline in a northwesterly direction to Middle River, then along the south shore of Middle River to the tributary leading to Swan Pond, then directly across Middle River and along the shore to Great Egg Harbor River, then along the shore of Great Egg Harbor River to a Department maintained marker, then bearing approximately 028 degrees T to F1 R "8", then along the northern and/or eastern shore of Great Egg Harbor River in a downstream direction to the point of origin at F1 R "4".

7:12-5.1 Seasonal Special Restricted growing waters (Special Restricted Area: May 1 through September 30 yearly, Condemned Area: October 1 through April 30 yearly)

[a] The Seasonal Special Restricted waters described below shall be Condemned for the harvest of shellfish from October 1 through April 20 yearly, and Special Restricted Areas for the harvest of shellfish only in conjunction with the approved resource recovery programs described in N.J.A.C. 7:12-9 and N.J.A.C. 7:17, during the period May 1 through September 30 yearly. These waters will not be utilized, that is, will not be available for the harvest of any shellfish, within any resource recovery program until the levels of contamination in shellfish tissue from certain heavy metals are found to be within those recommended by the U.S. Food and Drug Administration (FDA) as determined by [this] the Department from analyses of ongoing studies. [This area is designated on the charts referred to in N.J.A.C. 7:12-1.1 and is described as:

1. Raritan Bay area: Seasonal Special Restricted Areas-Special Restricted Area from May 1 through September 30 yearly, and Condemned Areas October 1 through April 30 yearly.

i. All those waters contained within a line beginning on the northernmost point of Conaskonk Point near Union Beach, New Jersey and bearing approximately 345 degrees T to Sequine Point at Princes Bay, Staten Island, New York until it intersects the New York-New Jersey boundary, then along that boundary in an easterly direction until it intersects the Raritan Bay East Reach Channel, then along the southwest boundary of that channel in a southeasterly direction (approximate bearing 106 degrees T) to the marker worker designated as GR "TC" Interrupted Quick Flashing Green light (GR "TC" 1 QK F1 G) located at the intersection of Raritan Bay East Reach, Sandy Hook Channel and Terminal Channel, and then bearing approximately 098 degrees T to the navigation aid designated as "Equal Interval 6 Second and Vertical Beam light 38ft 15M Bell" (E. Int. 6 sec and VB 38ft 15M Bell) located on the shore at Sandy Hook Point, then proceeding in a generally southerly direction following the western shoreline of Sandy Hook until it intersects a line connecting Sandy Hook light, Fixed light 88ft 19M) to the northernmost extent of that pier maintained by the United States Navy in Leonardo (United States Navy Ammunition Depot-Earle) approximate bearing 262 degrees T) and then following this intersecting line to the northern end of the Navy Pier, and then following the easternmost side of that pier to where it intersects the shoreline in Leonardo, and then following the shoreline in a generally northwest direction to the northernmost point of land on Point Comfort (Keansburg), then bearing approximately 272 degrees T to the northernmost point of land on Conaskonk Point (Union Beach), its point of origin.]

7:12-9.1 General provisions

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

(h) Due to the necessity to closely monitor this program for the purpose of protecting public health, the Division of Water Resources shall immediately suspend the Special Permit or any participant who violates any condition of the permit or any [of these regulations] **provision of this chapter and thereby creates a threat to public health by compromising the purity of shellfish as a food product. The Division**

of Water Resources may suspend the Special Permit of any participant who violates any other condition of the permit or any other provision of this chapter. [Right] The right to post-suspension hearing shall be granted by the Division of Water Resources in accordance with the procedures established by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Rules [of Practice], N.J.A.C. 1:1[-1 et seq]. The hearing shall be held [within 10 days of the participant's request for a hearing] on an expedited basis, unless an adjournment is requested by the participant.

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

7:12-9.7 Relay program

(a) (No change.)

(b) Permits 5a and 5b shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3. These rules must be read together with the shellfisheries [regulations] rules which appear at N.J.A.C. 7:25-15.1.

1.-8. (No change.)

9. All hard clams taken from the designated relay waters shall be relayed to the special leased plots on a schedule set by [this] the Department and shall remain upon said leased plots until written permission for harvest has been granted by the Bureau of Marine Water Classification and Analysis. Relayed hard clams are required to remain for a minimum of 30 days in the special relay leased plots. The minimum 30 day purging period will begin on a schedule established by the Department. Additionally, the water temperature of the Approved waters during the minimum 30-day purging period shall be at or above [13] 10 degrees [centigrade] Celsius ([55] 50 degrees Fahrenheit) as determined by the Bureau of Marine Water Classification and Analysis. Reharvesting of the relayed shellfish will be regulated by the Department of Environmental Protection's Division of Water Resources, Bureau of Marine Water Classification and Analysis. Reharvesting of shellfish from the special relay leased plots may commence only after receipt of written permission from this office.

10.-21. (No change.)

7:12-9.8 Transfer program

(a) (No change.)

(b) Permit No. 6 shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3.

1.-6. (No change.)

7. To facilitate compliance with (b)6 above, the permittee shall notify the Bureau of Marine Water Classification and Analysis by letter after the final [transferring to a particular] transfer to the leased lots **has been completed and validated in accordance with (b)2 above.** The minimum 30-day purging period [will not begin until the latter of both notice of final transferring is received and the water temperature of the approved waters is maintained at or above 13 degrees centigrade 55 degrees Fahrenheit) as determined by the Bureau of Marine Water Classification and Analysis] **shall begin after the Bureau of Marine Water Classification and Analysis has received written notice of the final transfer date and has determined that the water temperature of the Approved waters have stabilized at or above 10 degrees Celsius (50 degrees Fahrenheit).**

8.-11. (No change.)

(c) (No change.)

7:12-9.9 Transplant program

(a) The purpose of Permit No. 7 (Transplant Permit Seed Oysters) is to allow for the harvest and possession of seed oysters from waters classified other than Approved for transplanting to leased lots in Approved waters for purging of pollutants, growth and ultimate marketing after written release by the Bureau of Marine Water Classification and Analysis. The purging period will be for a minimum of 30 days at which the water temperature of the approved waters [is maintained] **have stabilized at or above [13] 10 degrees [centigrade] Celsius ([55] 50 degrees Fahrenheit)** as determined by the Bureau of Marine Water Classification and Analysis.

(b) Permit No. 7 shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3.

1.-6. (No change.)

7. To facilitate compliance with (b)6 above the permittee shall notify the Bureau of Marine Water Classification and Analysis by letter after the final transplanting to a particular leased lot. The minimum 30 day purging period [will not begin until the latter of both notice of final transplanting is received and the water temperature of the Approved waters is maintained at or above 13 degrees centigrade (55 degrees Fahrenheit) as determined by the Bureau of Marine Water Classification and Analysis] **shall begin after the Bureau of Marine Water Classification and Analysis has received written notice of the final transfer date and has determined that the water temperature of the Approved waters have stabilized at or above 10 degrees Celsius (50 degrees Fahrenheit).**

8.-10. (No change.)

(c) (No change.)

7:12-9.12 Seed oysters

(a) (No change.)

(b) Permit No. 8c shall be valid only under the following specific requirements or conditions. Violations may subject the holder to prosecution under N.J.S.A. 58:24-3.

1.-6. (No change.)

7. To facilitate compliance with (b)6 above, the permittee shall notify the Bureau of Marine Water Classification and Analysis by letter after the final planting on [a particular] the leased lot. The minimum 30-day period [will not begin until the latter of both notice of final planting is received and the water temperature of the Approved waters is maintained at or above 13 degrees centigrade (55 degrees Fahrenheit)] **shall begin after the Bureau of Marine Water Classification and Analysis has received written notice of the final planting date and has determined that the water temperature of the Approved waters has stabilized at or above 10 degrees Celsius (50 degrees Fahrenheit).**

8.-9. (No change.)

(c) (No change.)

(a)

DIVISION OF COASTAL RESOURCES Notice of Extension of Comment Period Flood Hazard Area Control Proposed Readoption: N.J.A.C. 7:13

Take notice that the Department of Environmental Protection is extending until May 8, 1989 the period for submission of written comments on the proposed readoption of the Flood Hazard Area Control rules. The notice of proposed readoption was published on February 21, 1989 in the New Jersey Register at 21 N.J.R. 371(a). Please refer to the notice of proposal (DEP Docket No. 003-89-01) for further information.

Submit written comments by May 8, 1989 to:

Judeth A. Piccinini, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

(b)

DIVISION OF COASTAL RESOURCES Redelineation of the Ramapo River Proposed Amendment: N.J.A.C. 7:13-7.1(d)

Authorized By: Christopher J. Daggett, Commissioner,
Department of Environmental Protection.
Authority: N.J.S.A. 13:1B-3 and N.J.S.A. 58:16A-50 et seq.
DEP Docket Number: 021-89-04.
Proposal Number: PRN 1989-216.

(CITE 21 N.J.R. 1046)

A public hearing concerning this proposed amendment will be held on:
Wednesday, May 17 at 1:30 P.M.
Department of Environmental Protection
Division of Coastal Resources
Conference Room B, 1st Floor
501 East State Street
Trenton, New Jersey

Submit comments by May 31, 1989 to:
Suzanne Dice-Goldberg, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated floodways, by revising the existing floodway and flood fringe area delineation along the Ramapo River, from 3,200 feet downstream of Route 17 upstream to a point approximately 300 feet upstream of Route 17, within Mahwah Township in Bergen County.

The proposed amendment to redelineate the aforementioned portion of the Ramapo River is based upon stream encroachment application number 12096 for the placement of fill. Plans and hydraulic data, submitted by the RBA Group on behalf of Marriott Corporation, show a narrower floodway and flood fringe immediately downstream of Route 17, with a one foot reduction in the State flood hazard area profiles in this area. Immediately upstream of Route 17, the New Jersey flood hazard area profile is one foot higher than currently shown, but the floodway and flood fringe remain the same because of the steep topography in the outer overbank areas. Approximately 1,600 feet downstream of Route 17, the proposed floodway is approximately 540 feet wider than currently mapped.

The overall square footage of the proposed New Jersey Flood Hazard Area is slightly smaller than that indicated in the original delineation. The flood fringe is also slightly smaller. The proposed New Jersey flood hazard area flood limits reflect the lower flood levels and topographic mapping used in the stream encroachment application.

The proposed redelineation will require no change in the text of N.J.A.C. 7:13-7.1, since only a revision of the flood hazard area delineation map is required. Review of maps and profiles associated with this revision is recommended.

Social Impact

Regulation of delineated flood hazard areas is intended to preserve the flood carrying capacity of the waterway and its surroundings, while minimizing the threat to the public safety, health and general welfare. By delineating streams and rivers, the Department identifies the area(s) subject to the New Jersey Flood Hazard Area Control Act (FHACA), N.J.S.A. 58:16A-50 et seq., and the rules promulgated pursuant thereto, N.J.A.C. 7:13.

The proposed redelineation more accurately determines the location of floodway limits and flood hazard areas. Since the map revision directly affects only the applicant's property in this case, no additional social impact will result beyond what was reasonably foreseeable at the time of the original floodway delineation of the West Branch Rahway River.

Economic Impact

The proposed amendment will affect an application for a specific on-site project only. The redelineation will reduce the area subject to regulation under the FHACA, and may slightly increase the applicant's property value. Outside the boundaries of the applicant's property, no economic impact is expected to result from this amendment beyond what was reasonably foreseeable at the time of the original delineation.

Environmental Impact

The purpose of this proposed redelineation is to more accurately define the flood hazard area of the Ramapo River, within which restrictions on the scope of development apply. This amendment is not expected to have any adverse environmental impact.

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 this amendment would not impose compliance, reporting or recordkeeping requirements on small businesses, since the affected applicant is not a small business as defined under the Act.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey; and at the Department of Environmental Protection, Bureau of Flood Plain Management, 5 Station Plaza, 501 East State Street, Trenton, New Jersey. In addition, maps of the proposed redelineation have been sent to the Clerk of Mahwah Township and to the Bergen County Planning Board.

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Listing of Polychlorinated Biphenyls (PCBs) as a Hazardous Waste

Proposed Amendments: N.J.A.C. 7:14A-4.7; 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

Authorized By: Christopher J. Daggett, Commissioner,
Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6, and
N.J.S.A. 58:10A-1 et seq., particularly 58:10A-4.

DEP Docket Number: 017-89-04.

Proposal Number: PRN 1989-220.

Submit written comments by June 30, 1989 to:

Carl Will
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection (Department) is proposing to amend its rules at N.J.A.C. 7:14A-4.7 and 7:26 in order to list polychlorinated biphenyls (PCBs) as a hazardous waste and to regulate the storage and disposal of that waste. The proposed amendments define PCBs, and define PCB hazardous waste as solid waste with concentrations of PCBs by weight of 50 parts per million (ppm) or greater, and include PCB hazardous waste in the listing of hazardous wastes at N.J.A.C. 7:26-8.13(b). The listing of PCB hazardous waste subjects such waste to the requirements of the State hazardous waste management rules, including those mandated by the Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq. (1976). The amendments also proscribe land disposal of PCB hazardous waste, exclude PCB hazardous waste from the small quantity generator exemption at N.J.A.C. 7:26-8.3, exempt from manifesting requirements and establish standards for shipment of PCB hazardous waste to certain generator owned storage sites, and establish standards for the proper disposal of PCB residues in empty containers and for storage and incineration of PCB hazardous waste and other PCB waste. The amendments apply to waste disposal only and do not establish waste site cleanup level requirements.

PCBs are proven to have deleterious effects on human health and the environment. PCBs persist in the environment and in animal and human tissue, accumulate in the food chain, are toxic to aquatic life at low concentrations, are associated with adverse human health effects, and are extremely difficult to clean up once released into the environment. PCB commercial mixtures and wastes have been found to contain very toxic contaminant breakdown products, including polychlorinated dibenzofurans (PCDFs). Widespread PCB contamination has been documented world-wide due to improper containment and disposal practices.

AGENCY NOTE: The technical justification for this regulatory action is contained in the Basis and Background Document. The Basis and Background Document is available upon request from the Bureau of Hazardous Waste Regulation and Classification, phone number (609) 292-8341, or may be inspected at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey.

PCBs are defined by the United States Environmental Protection Agency (USEPA) at 40 C.F.R. pt. 761 (1987) as "any chemical substance or combination of substances that is limited to the biphenyl molecule that has been chlorinated to varying degrees." PCBs are usually identified by

their gas chromatograph pattern, but, because of the number of other isomers and possible contaminants in wastes, PCBs do not always present gas chromatograph patterns that exactly match the standards. For example, there are 209 possible PCB isomers and a number of breakdown product contaminants which may be present in used PCB electrical fluid. The Department has encountered analytical problems with weathered environmental examples of PCBs on several occasions. The Department is requiring the use of Method 8080, found in USEPA publication SW-846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," to detect the presence of and to determine the concentration of PCBs.

PCBs are currently subject to Federal regulations, called the PCB Disposal and Marking Rule, at 40 C.F.R. pt. 761 (1987), promulgated in 1978 pursuant to the Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 et seq. (1976). In 1982, at 47 FR 37,342, the USEPA finalized amendments authorizing the use of PCBs in electrical transformers, capacitors, electromagnets, circuit breakers, voltage regulators, reclosers, cables, and switches/sectionalizers, and regulating the trade in and disposal of this electrical equipment. The USEPA has authorized, subject to conditions, certain uses of PCBs for the life of certain equipment, while requiring that other PCB-containing equipment must be replaced according to the published schedule regardless of equipment life. For example, PCB transformers and PCB-filled electromagnets containing 500 ppm or more PCBs posing an exposure risk to food and feed had to be replaced by October, 1985, and large PCB capacitors containing 500 ppm or more PCBs that are not located in restricted access or indoor installations must be replaced by October 1, 1988. The Department's amendments proposed herein assure that this anticipated increased disposal activity will be monitored by the Department. The Department has incorporated the Federal regulations, where possible, into these amendments.

TSCA and Federal regulations promulgated under TSCA exempt small quantity generators and do not provide for the tracking of waste or for assuring sufficient financial resources on the part of treatment, storage, and disposal (TSD) facilities for liability or for safe closure of disposal sites. In the course of administering the State hazardous waste program, the Department has encountered numerous violations of the Federal regulations. For example, PCBs are sometimes mixed with waste oil and then burned or sprayed onto road surfaces for dust suppression. Listing of PCBs as hazardous waste will subject such waste to State hazardous waste management rules, including tracking by manifest and financial assurance provisions, and will enable the Department to oversee the transport, storage, and disposal of all PCB hazardous waste. Waste oils are currently listed as hazardous wastes in the State rules. The amendments, in conjunction with the waste oil rules, will work to mitigate the threat posed by improper management of PCB wastes.

PCBs have been voluntarily manifested in New Jersey since 1978. Ten million pounds of PCBs and PCB-contaminated materials were reported by generators as being transported in the State in 1980, and over 7,000,000 pounds were reported in 1984. More PCBs than are reported may be moving through the State. There are currently no disposal facilities in New Jersey that can accept PCBs, and there are few such facilities nationwide. As a result, there can be an accumulation of PCBs in storage before disposal, which is expected to increase in the near future as a result of Federally-mandated disposal. The listing of PCB hazardous waste will require generators, transporters, servicing/recycling companies, and transfer, storage, and disposal facilities that accumulate or dispose of PCB hazardous waste to comply with State hazardous waste rules, which will protect against both accidental and deliberate release of PCBs into the environment.

PCB-contaminated containers that held PCBs at concentrations of less than 50 ppm are considered empty under the amendments proposed herein if they are handled according to N.J.A.C. 7:26-8.4(b). Such containers are required to be drained until all free flowing liquid is removed. Containers that held PCB hazardous wastes, that is, those wastes with concentrations of PCBs by weight of 50 ppm or greater, will be required to be triple-rinsed with an appropriate solvent prior to disposal, as described in the amendment at N.J.A.C. 7:26-8.4(e). The proposed amendment to N.J.A.C. 7:26-8.4(f) provides that types of equipment that contain or previously contained PCBs, for example, transformers, other electrical equipment, and hydraulic equipment, are not considered to be containers under the State rules.

Although a small number of capacitors contain PCBs in high concentrations, the amendment at N.J.A.C. 7:26-8.2(a)22 exempts from regulation as hazardous waste certain capacitors from household appliances in order to facilitate disposal of appliances. Because there is an equivalent

exemption under TSCA, these capacitors can be disposed of as nonhazardous waste in any state where they are not regulated as hazardous waste on the state level.

There is no small quantity generator (SQG) exemption under these amendments. All quantities of wastes containing PCBs at concentrations at or above 50 ppm will be fully regulated as hazardous waste. Activities are not exempted because of their being subject to other regulatory schemes, for example the New Jersey Pollutant Discharge Elimination System (see N.J.A.C. 7:14A); the New Jersey Air Pollution Control Regulations (see N.J.A.C. 7:27-8); the Federal Clean Water Act, 33 U.S.C. §1251 et seq.; the Federal Clean Air Act, 42 U.S.C. §7401 et seq.; the Federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq.; or TSCA. The burning of waste oil containing less than 50 ppm PCBs in a boiler is subject to air pollution control permit requirements under N.J.A.C. 7:27-8 as the combustion of a non-commercial fuel as defined at N.J.A.C. 7:27-8.1, in addition to being subject to hazardous waste management rules.

Social Impact

The proposed amendments will have a positive social impact. The regulated community should already be in compliance with Federal regulations regarding the management of PCBs. Additional requirements, that PCB hazardous waste be manifested, that generators and transporters comply with RCRA registration and reporting requirements, and that TSD facilities comply with RCRA permitting requirements, will benefit the public by ensuring the safe handling of PCBs. All users of PCB-contaminated equipment, including transporters, recyclers, metal scavengers, waste oil dealers, transformer repair shops, or treatment, storage, and disposal facilities, which generate, service, or otherwise manage contaminated equipment or materials, transformer oils, or waste oils are subject to the proposal. In the past, PCBs were used in heat transfer and hydraulic fluids, plasticizers, adhesives, cutting oils, and carbonless copy paper. Currently, PCBs are used in electrical equipment.

Economic Impact

Present industry practice is to comply with Federal regulations governing PCBs, including marking, recordkeeping, storage, and disposal requirements. Under current Federal regulations, PCBs must be disposed of at USEPA approved sites. The amendments proposed herein require that PCB hazardous waste be manifested upon shipment from the site of generation and that generators obtain USEPA ID numbers and file annual reports with the Department. Transporters are required to register as hazardous waste transporters and to meet all other applicable requirements. Where State and Federal rules overlap, the more stringent standards apply.

The Department has, where possible, integrated Federal requirements into the amendments in order to mitigate any adverse economic impact on the industry. Under present industry practices, the cost of disposal varies according to the quantity, concentration, and physical state (that is, solid or liquid) of the PCB waste. Transportation costs vary according to distance and according to the waste's quantity, type, and concentration. A generator with a constant high volume of waste may find disposal costs less per unit volume than does an infrequent generator of small quantities of waste. The amendments are expected to have a moderate economic impact, by imposing the costs of manifesting and annual reporting on businesses that are not already voluntarily manifesting and reporting.

Environmental Impact

The proposed amendments will have a positive environmental impact. PCBs pose a significant threat to human health and to the environment. PCBs are not easily degraded, and persist for years in the environment and in animal and human tissue. The amendments will ensure that these hazardous wastes are no longer released into the environment and are disposed of safely. The 50 ppm threshold is supported by the scientific literature and was adopted in the Federal regulations promulgated pursuant to TSCA.

Regulatory Flexibility Analysis

The proposed amendments apply to hazardous waste treatment, storage, and disposal facilities, transporters, and generators of PCB hazardous waste, including users of equipment contaminated with PCBs such as electrical and hydraulic equipment. It is estimated that the majority of businesses affected by this proposal are small businesses as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to comply with these amendments, the small businesses will have to bring their PCB hazardous waste activity into compliance with the

requirements of the State's hazardous waste management rules, including manifesting requirements. If not already subject to State hazardous waste management program requirements for other hazardous wastes, small businesses may require technical and legal assistance. Capital costs and annual costs of compliance will be determined by the amount of PCB hazardous waste managed and by the amount and nature of other hazardous wastes managed by the small business. In developing these amendments, the Department has balanced the need to protect the environment against the economic impact of the amendments and has determined that to minimize the impact of the amendments on small businesses would endanger the environment and public health, and, therefore, no exemption from coverage is provided. The small quantity generator exemption is being removed for PCB hazardous waste because PCBs are highly toxic and persist in the environment even in small amounts.

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

7:14A-4.7 Standards for hazardous waste land treatment units

(a)-(o) (No change.)

(p) PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, being any solid waste with concentrations of PCBs of 50 ppm or greater by weight, shall not be placed in land treatment units.

7:26-1.4 Definitions

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

...
"PCB hazardous waste" means any hazardous waste as defined at N.J.A.C. 7:26-8.13(b), numbers X750 to X754 inclusive, being any solid waste with concentrations of PCBs of 50 parts per million (ppm) or greater by weight.

...
"Polychlorinated biphenyls" or "PCBs" means any chemical substance or combination of substances that is limited to the biphenyl molecule that has been chlorinated to varying degrees. This includes weathered PCBs. The presence and concentration of PCBs shall be determined by Method 8080 of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846.

...

7:26-7.4 Hazardous waste generator responsibilities

(a) General requirements for generators not exempted pursuant to N.J.A.C. 7:26-8 are as follows:

1.-12. (No change.)

13. A generator exempted according to N.J.A.C. 7:26-7.7(e) shall comply with the full requirements of this section upon off-site shipment of the hazardous waste for final disposition.

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

7:26-7.7 Exemption from manifest rules

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

(e) A generator who generates PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, is exempt from the requirements at N.J.A.C. 7:26-7.4 for that PCB hazardous waste which is transported intra-state provided the following requirements are met:

1. The PCB hazardous waste is transported intra-company only, meaning between sites owned by the same company, between sites owned by a parent and its subsidiary corporations, or between sites owned by subsidiaries of the same parent corporation;

2. The generator's storage facility is in compliance with the requirements at N.J.A.C. 7:26-9.1(c)17;

3. The shipment is direct between the generator-owned site of generation, that is, where the substance becomes a solid waste as defined at N.J.A.C. 7:26-1.6, and the generator's storage facility;

4. The generator complies with all relevant provisions of the Federal Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 et seq. (1976), and Federal regulations promulgated pursuant thereto, at 40 C.F.R. pt. 761 (1987), including recordkeeping requirements. Any such records must be available for review by the Department; and

5. The generator complies with the requirements of N.J.A.C. 7:26-7.4 upon off-site shipment of the hazardous waste for final disposition.

7:26-8.2 Exclusions

(a) The following materials are not regulated as hazardous waste for the purposes of this subchapter:

1.-21. (No change.)

22. Small capacitors from household appliances, provided that:

i. The capacitor contains less than 1.36 kilograms (kg.) (three pounds) of dielectric fluid. (Capacitors whose total volume is less than 1,639 cm³ (100 cubic inches) or whose total weight is less than 4.08 kg. (nine pounds) shall be deemed to contain less than 1.36 kg. of dielectric fluid);

ii. The capacitor is intact and not leaking at the time of disposal;

iii. The capacitor is disposed of as municipal solid waste (I.D. 27); and

iv. The generator of the capacitor has not at any time manufactured PCBs, PCB-containing electrical equipment, or PCB-containing capacitors.

(b) (No change.)

7:26-8.3 Special requirements for hazardous waste generated by small quantity generators

(a) (No change.)

(b) Except for those wastes identified in (d) [and], (e), and (j) below, a small quantity generator's hazardous wastes are not subject to regulation under N.J.A.C. 7:26-7[.1 et seq.] and [N.J.A.C.] 7:26-9[.1 et seq.] through 11[.1 et seq.]

(c)-(i) (No change.)

(j) If a generator generates a PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, all quantities of that hazardous waste are subject to regulation under N.J.A.C. 7:26-7 through 12.

7:26-8.4 Residues of hazardous waste in empty containers

(a) Any hazardous waste remaining in either an empty container or an empty inner liner removed from [an empty] a container, the term "empty" [as] defined in (b) through (e) below, is not subject to regulation under N.J.A.C. 7:26-7[.1] through 11[.1].

1. Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in (b) through (e) below, is subject to regulation under N.J.A.C. 7:26-7[.1] through 11[.1].

(b) Except as provided in (c), (d), and (e) below, [A] a container or an inner liner removed from a container that has held any hazardous waste[, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in N.J.A.C. 7:26-8.13, 8.14 or 8.15(a)5.] is empty if:

1. (No change.)

2. No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner.

[i.](c) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

[3.](d) A container or an inner liner removed from a container that has held an acute hazardous waste identified in N.J.A.C. 7:26-8.13, 8.14, or 8.15(a)5 is empty if:

1. All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, for example, pouring, pumping, and aspirating;

2. No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner; and

3. The container or inner liner has been:

i. [The container or inner liner has been triple] Triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

ii. [The container or inner liner has been cleaned] Cleaned by another method that has been shown in the scientific literature or by tests conducted by the generator to achieve equivalent removal; or

iii. (No change.)

(e) A container or inner liner which held PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, is empty if:

1. All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, for example, pouring, pumping, and aspirating;

2. No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner;

3. The container or inner liner has been triple rinsed in accordance with procedures described at 40 C.F.R. pt. 761 (1987) with a suitable solvent containing 50 ppm PCBs or less, the solubility of PCBs in the solvent being five percent or more by weight, or the container or inner liner has been cleaned by an equivalent method approved in advance in writing by the Department and that has been shown in the scientific literature or in tests conducted by the generator to be equivalent;

4. Any inner liner that prevented contact between the waste and the container is removed; and

5. All requirements of the Federal Toxic Substances Control Act, U.S.C. §2601 et seq. (1976), and Federal regulations promulgated pursuant thereto have been complied with.

(f) For the purposes of this section, the definition of "container" does not include electrical, hydraulic, or other equipment containing or previously having contained PCBs.

7:26-8.13 Hazardous waste from non-specific sources

(a) (No change.)

(b) NJ Hazardous Waste Number	Hazardous Waste	Hazardous Code
Generic 1.-6. (No change.)		
[7. X727]	[Waste oil from the draining, cleaning or disposal of electric transformers.]	[(T)]
[8.]7. (No change in text.)		
9. X750	PCB-contaminated liquids containing 50 ppm or more by weight of PCBs	(T)
10. X751	PCB-contaminated solids containing 50 ppm or more of PCBs by weight	(T)
11. X752	Drained electrical, hydraulic, or other equipment which contained liquids with 50 ppm or more of PCBs by weight	(T)
12. X753	Undrained electrical, hydraulic or other equipment containing liquids with 50 ppm or more of PCBs by weight	(T)
13. X754	PCB-contaminated sludge or dredge material with 50 ppm or more of PCBs by weight	(T)

7:26-9.1 Scope and applicability

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

(c) The standards and requirements of this subchapter do not apply to:

1.-8. (No change.)

9. The owner or operator of an industrial boiler or industrial furnace burning a hazardous waste, provided the following conditions are met:

i.-ix. (No change.)

x. The material being burned contains no PCBs of any concentration.

10.-16. (No change.)

17. The owner or operator of a hazardous waste facility which is used solely for the storage of PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, generated by the owner or operator of the facility, provided the following conditions are met:

i. The facility does not store any other hazardous waste for which a hazardous waste facility permit is required and does not treat or dispose of PCB hazardous waste. If a facility does not meet the criteria of this paragraph, then it must obtain a hazardous waste facility permit pursuant to N.J.A.C. 7:26-12 in order to store PCB hazardous waste; and

ii. The facility is constructed and operated in full compliance with the Federal Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 et seq. (1976), and Federal regulations promulgated pursuant thereto, including the requirement at 40 C.F.R. §761.65 (1987) to dispose of the PCB hazardous waste within one year of placing it into storage; and

iii. The owner or operator of an existing facility, as defined at N.J.A.C. 7:26-1.4, files the notice of his or her intent to store PCB hazardous waste pursuant to this paragraph with the Department on or after (90 days after the effective date of these amendments); or

iv. The owner or operator of a new facility files notice of his or her intention to store PCB hazardous waste pursuant to this paragraph with the Department prior to the commencement of storage activities.

v. The notice required in (c)17iii and iv above shall be in writing and shall include:

- (1) The facility name, address, I.D. number;
- (2) The generator name, address, I.D. number, if different from (c)17v(1) above;
- (3) The date the facility began or will begin operation;
- (4) A description of the design and capacity of the facility;
- (5) A description of the state, composition, waste code, and method of containment for all wastes stored and/or to be stored at the facility;
- (6) A site plan, showing all necessary details of the storage facility; and
- (7) An originally-signed certification stating the following:

I (insert name of owner or operator), certify that (insert facility name, address and I.D. number) is designed, constructed, and operated in compliance with all relevant regulations adopted pursuant to the Toxic Substances Control Act, 15 U.S.C. §2601 et seq. (1976) and effective on (insert date on which certification is signed).

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate, or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true.

(Date)	(Name)
	(Title)
	(Signature)

; and

vi. The certification required by (c)17v above shall be signed as follows:

- (1) For a corporation, by a principal executive officer of at least the level of vice president;
- (2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
- (3) For a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official.
- (d)-(f) (No change.)

7:26-9.2 General prohibitions

- (a) (No change.)
- (b) No person shall cause, suffer, allow, or permit:
 - 1. The installation or other use of any new underground storage tank for the purpose of containing a liquid hazardous waste except that commercial service stations may install and use new underground storage tanks for storing waste oil provided the tank has a capacity of less than 1001 gallons[.];
 - 2. The conversion of any underground storage tank in use or ready for use on the effective date of this subchapter for the purpose of containing a liquid hazardous waste; [or]
 - 3. The use of any existing underground hazardous waste storage tank unless:
 - i. Monitoring [pursuant to] in compliance with N.J.A.C. 7:14A-6 is performed;
 - ii. Such use is limited to the specified lifetime of the tank; and
 - iii. [It] The tank is managed [pursuant to] in compliance with N.J.A.C. 7:26-10.5(e)6; [and]
 - 4. The use of hazardous waste piles[.];
 - 5. The disposal of any PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, in any landfill, surface impoundment, or any hazardous waste facility by underground injection or by any other land disposal method;

6. The disposal of any drained or undrained PCB-containing electrical or other equipment, as specified at N.J.A.C. 7:26-8.13(b)11 and 12, New Jersey Hazardous Waste numbers X752 and X753, in landfills or by any other land disposal method; or

7. The disposal of any PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, in any incinerator which does not meet the requirements of the Federal Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 et seq. (1976), and Federal regulations promulgated pursuant thereto. (c)-(d) (No change.)

7:26-10.6 Surface impoundments

- (a)-(d) (No change.)
- (e) Operational and maintenance standards for surface impoundments include the following:
 - 1.-11. (No change.)

12. PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, shall not be placed in a surface impoundment. (f)-(h) (No change.)

7:26-10.7 Hazardous waste incinerators

- (a)-(e) (No change.)
- (f) Any person responsible for operating a hazardous waste incinerator shall comply with the following:
 - 1.-8. (No change.)

9. In addition to compliance with all applicable New Jersey statutes and rules, incinerators used to dispose of waste containing PCBs at any concentration must comply with all requirements of the Federal Toxic Substances Control Act (TSCA), 15 U.S.C. §2601 et seq. (1976), and Federal regulations promulgated pursuant thereto. (g)-(m) (No change.)

7:26-10.8 Hazardous waste landfills

- (a)-(d) (No change.)
- (e) Operational standards for hazardous waste landfills include the following:
 - 1.-9. (No change.)
 - 10. The following shall not be placed in a hazardous waste landfill:
 - i. (No change.)
 - ii. Non-containerized liquid waste; [or]
 - iii. (No change.)
 - iv. Acute hazardous waste (H), as listed in N.J.A.C. 7:26-8.15(a)5, and toxic waste (T), as listed in N.J.A.C. 7:26-8.15(a)6, unless the owner or operator receives from the generator a copy of documentation that the waste type(s) have been approved by the Department for final land disposal in accordance with N.J.A.C. 7:26-7.4(a)[9 and 10.]; or

v. PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4; 11.-22. (No change.) (f)-(j) (No change.)

v. PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4; 11.-22. (No change.) (f)-(j) (No change.)

7:26-11.3 Surface impoundments

- (a)-(g) (No change.)
- (h) PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, shall not be placed in a surface impoundment.

7:26-11.4 Hazardous waste landfills

- (a) Operational standards for hazardous waste landfills include the following:
 - 1.-12. (No change.)
 - 13. PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4, shall not be placed in a hazardous waste landfill.
 - 14. Solid wastes containing less than 50 ppm by weight of PCBs may be placed in a hazardous waste landfill provided that, in addition to complying with all applicable State statutes and rules, the owner or operator of the landfill complies with all requirements of the Federal Toxic Substances Control Act (TSCA), 42 U.S.C. §2601 et seq. (1976), and Federal regulations promulgated pursuant thereto, specifically 40 C.F.R. §761.75 (1987).
 - (b)-(d) (No change.)

7:26-12.1 Scope and applicability

- (a) (No change.)
- (b) The following persons are not required to obtain a permit pursuant to this subchapter to conduct the following activities or to construct or operate the following hazardous waste facilities[.]:

- 1.-6. (No change.)
- 7. The owner or operator of an industrial boiler or industrial furnace burning hazardous waste provided the following conditions, as well as those set forth at N.J.A.C. 7:26-9.1(c)9, are met:
 - i.-vii. (No change.)
 - viii. The hazardous waste shall be burned no more than 90 days after it is generated and the following conditions shall be met:
 - (1)-(3) (No change.)
 - (4) For waste which is placed in above ground tanks, the following requirements shall be met:
 - (A) (No change.)
 - (B) The waste must be managed in conformance with N.J.A.C. 7:26-9.3(b)1-5 and 8 as well as N.J.A.C. 7:26-9.1(c)9viii(2) and (3); [and]
 - ix. The device is not a cement kiln[.]; and
 - x. The waste to be burned does not contain any PCB hazardous waste, as defined at N.J.A.C. 7:26-1.4.
- 8.-11. (No change.)
- (c)-(g) (No change.)

(a)

**DIVISION OF COASTAL RESOURCES
Emergency Flood Control Bond Act Rules
Proposed Readoption with Amendments: N.J.A.C.
7:23**

Authorized By: Christopher J. Daggett, Commissioner,
Department of Environmental Protection.
Authority: Emergency Flood Control Bond Act (P.L. 1978, c. 78),
and N.J.S.A. 13:1D-1 et seq.
DEP Docket Number: 019-89-04
Proposal Number: PRN 1989-218.
Submit written comments by May 31, 1989 to:
Jane Engel, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66 (1978), N.J.A.C. 7:23 expires on June 18, 1989. As required by the Executive Order, the Department of Environmental Protection (Department) has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Department proposes to readopt this chapter with amendments.

As a result of the loss of life and extensive property damage caused by severe floods in New Jersey, in 1978 the Legislature passed and the Governor signed the Emergency Flood Control Bond Act (Act), P.L. 1978, c. 78. On November 7, 1978 the citizens of New Jersey approved the Act and authorized the issuance of bonds in the amount of \$25,000,000. Pursuant to the Act, the bond monies were reserved to the Department for distribution.

The Act authorized \$22,000,000 of the proceeds of the bonds to be used for grants to municipalities and counties for the acquisition, development, construction and maintenance of flood control facilities. From this sum, the Department was authorized to make grants of up to 50 percent of the cost of a flood control project. The Department has made grants to municipalities and counties for 34 projects; 24 of these projects have been completed. Approximately \$2,500,000 of the original sum remains to be committed to eligible projects. The Act also authorized, and the Department distributed, \$3,000,000 of the proceeds of the bonds for the development of Statewide and regional comprehensive flood control master plans.

N.J.A.C. 7:23 implements the Emergency Flood Control Bond Act and establishes the basic eligibility criteria for a flood control grant, the priority system for ranking eligible applicants, the procedure for awarding a grant, the conditions grantees must satisfy before receiving funds under a grant, and administration and performance requirements under the grant.

The priority system established by N.J.A.C. 7:23 awards eligible applicants points based on the number of people who will be protected and the value of property that will be protected by the flood control project. Those applicants whose projects receive the most points are awarded grants if funds are available and the applicants comply with all other application requirements in a timely manner. The priority point system is weighted to favor those projects that protect the most residents in the identified flood prone area.

A summary of N.J.A.C. 7:23 follows:

N.J.A.C. 7:23-1 contains general provisions concerning the scope and purpose of the rules. This subchapter also includes rules regarding the Department's annual budget requests, reports to the Special Joint Legislative Committee and annual requests for legislative appropriations.

N.J.A.C. 7:23-2.1 and 2.2 set forth the scope of subchapter 2, and the definitions for N.J.A.C. 7:23.

N.J.A.C. 7:23-2.3 sets forth the eligibility criteria an applicant must meet to receive a grant. The criteria include the following: 1. that a proposed flood control project does not create more flooding problems upstream or downstream from the project; 2. that the project is an economical and environmentally sound solution to the flooding problem; 3. that the applicant irrevocably commit financial resources to complete the project; and 4. that the application be for a grant not in excess of \$1,000,000 since there are limited State funds available.

N.J.A.C. 7:23-2.4 describes the requirements of a preapplication conference between the Department and the applicant.

N.J.A.C. 7:23-2.5 sets forth the application procedures and describes the documentation and information that must be submitted to the Department for the type of project proposed. The information that must be contained in an Environmental Assessment, if required, is also outlined in this section.

N.J.A.C. 7:23-2.6 to 2.8 provide notice that the applications are public records, set forth the procedure by which each application will be evaluated by the Department, and the manner by which applicants will be notified of the approval or disapproval of their application.

N.J.A.C. 7:23-2.9 to 2.12 describe when the amount and terms of a grant are determined, the manner in which the State's share of a project is to be determined, the preparation and transmission of grant award documents, and the effect of a grant reward.

N.J.A.C. 7:23-2.13 sets forth the priority point system. The priority point system establishes a ranking of those projects that meet basic eligibility requirements. Those projects that do not get a minimum of 10 priority points are ineligible for grant monies.

N.J.A.C. 7:23-2.14 sets forth allowable project costs, particularly land acquisition costs, and indicates the basis upon which payment of allowable costs shall be made.

N.J.A.C. 7:23-2.15 to 2.17 set forth the manner in which used grant funds may be allocated by the grantee, how unused funds will be managed by the State, and how the grantee shall administer the funds to ensure against fraud and other unlawful or corrupt practices.

N.J.A.C. 7:23-2.18 sets forth general grant conditions, including project scheduling, required hazard insurance, accounting procedures, affirmative action requirements, performance bonds, and the letting of construction contracts.

N.J.A.C. 7:23-2.19 to 2.35 set forth administration and performance requirements under the grant, including termination procedures.

A summary of the proposed amendments follows:

The definition of "Assistant Director" was modified, and a definition of "Division" was added at N.J.A.C. 7:23-2.2. N.J.A.C. 7:23-2.4(b), 2.5(h), and 2.11 were modified to reflect the transfer of the Flood Plain Management Section from the Division of Water Resources to the Division of Coastal Resources. The modifications involve name changes and address changes.

The phrase "is a measurement of property" was added to the definition of "true value of property" at N.J.A.C. 7:23-2.2 to clarify that definition as it is used in N.J.A.C. 7:23.

The application closing date of August 20 in N.J.A.C. 7:23-2.5(g) was deleted. Since only approximately \$2,500,000 remains to be committed to eligible projects, the Department estimates that it will only need to invite applications once more in order to use up the bond funds. The Department has not received any applications for several years and does not want to wait until August 20, 1990 to close the next application period and thereby postpone awarding grants for another year. Instead, the Department will, through the New Jersey Register, announce and notify municipalities and counties six months in advance of the application

closing period. The Department also intends to directly notify all municipalities and counties six months in advance of the application closing period, in order to receive a better response from local governments.

The word "announcement" was added at N.J.A.C. 7:23-2.9 to clarify when the amount and term of the grant is determined.

Various editorial and address corrections have been made to the rule text.

Social Impact

The readopted rules with the proposed amendments will have a positive social impact on the people of the State by continuing to provide funding for flood control projects. The approved flood control projects will continue to reduce the probability of loss of life, bodily injury and damage to personal property in areas of the State prone to periodic flooding. Property owners, workers, and travelers in those areas will be relieved of the frustration, anxiety and stress common to victims of flooding.

Economic Impact

Flooding has a major negative economic impact on the economy of New Jersey. The New Jersey Statewide Flood Control Master Plan estimated that physical damage caused by riverine flooding between 1955-1980 exceeded \$452,000,000. This figure does not include public costs related to rescue, relief, emergency preparedness and flood fighting, or the indirect costs of business interruptions, factory closings, disruption of transportation, interference with utility services or other factors that result in the loss of wages, sales and production. Repetitive flooding also has a negative impact on property values and tends to destabilize a local tax base.

The existing rules have had a positive economic impact on the economy of the State by eliminating damage caused by flooding in the areas protected by the projects constructed with grant funds. Moreover, property values in areas protected by grant projects have been enhanced. The readopted rules with amendments will continue to reduce flood damage, and thus will have a positive economic impact. In addition, the readopted rules with amendments will create jobs during the construction phase of approved projects.

Environmental Impact

While construction of flood control works is potentially disruptive to a riverine environment, grant applicants are required, pursuant to N.J.A.C. 7:23-2.5(c), to prepare an Environmental Assessment identifying potential negative environmental impacts, and mitigation measures to be taken. The Environmental Assessment for each potential project is carefully reviewed by staff environmentalists and additional mitigation is recommended where possible. Each approved grant project must also satisfy applicable environmental rules and regulations in order to obtain all necessary permits from the Department. In developing the existing rules, the Department has balanced the need to protect the public from the adverse impacts of flooding while protecting the environment from the negative effects of constructing flood control works.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these rules will not impose reporting, recordkeeping, or other compliance requirements on small businesses because the rules establish policies and procedures for the distribution of funds to local governmental agencies.

Full text of the proposed re Adoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:13.

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

7:23-2.2 Definitions

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

...
 "Assistant Director" means the Assistant Director of the [Water Supply and Flood Plan Management] **Engineering and Construction** Element, Division of [Water] **Coastal Resources**, New Jersey Department of Environmental Protection. ...

"Division" means the **Division of Coastal Resources**.

...

"True value of property" is a measurement of property and shall be determined by use of the current State equalization table adopted by the Director of the Division of Taxation pursuant to N.J.S.A. 54:1-35.1.

7:23-2.4 Preapplication procedures

(a) (No change.)

(b) Questions concerning the grant program and requests for a preapplication conference should be directed to:

Chief, [Bureau of] Flood Plain Management **Section**
 Division of [Water] **Coastal Resources**
 [P.O. Box CN 029] **CN 401**
 Trenton, New Jersey 08625
 (609) 292-[4869]**2296**

7:23-2.5 Application procedures

(a)-(f) (No change.)

(g) Applications should be submitted well in advance of the application closing date for the year in which the applicant wishes to be awarded a grant. The application closing date shall be [August 20 of] **announced each year and the Department shall notify municipalities and counties six months in advance of the closing date by printing an announcement in the New Jersey Register**. Generally, processing of a completed application by the Division will be completed 90 calendar days after the application closing date for that year. No grant shall be made until a State appropriation is made.

(h) Applications shall be sent to:

Chief, [Bureau of] Flood Plain Management **Section**
 Division of [Water] **Coastal Resources**
 [P.O. Box CN-029] **CN 401**
 Trenton, New Jersey 08625

(i) (No change.)

7:23-2.9 Amount and terms of grant

The amount and terms of a grant shall be determined the time of the grant **announcement**. The amount of the grant shall be based upon allowable project costs as defined in [sections 2 and 14 of this subchapter] **N.J.A.C. 7:23-2.2 and 2.14**.

7:23-2.11 Grant award document

The Division of [Water] **Coastal Resources** of the Department shall prepare and transmit four copies of the grant award document to the applicant. The applicant shall execute the grant award document and return it within 30 calendar days after receipt. The Department may, in its discretion, extend the time for execution. The grant award document shall set forth the approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project or major phases thereof. The grant award document shall be deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department in the application process. After the Department has completed its internal processing of the grant award document, it shall transmit a copy of the executed grant award document to the grantee.

7:23-2.14 Allowable project costs

(a) (No change.)

(b) In determining acquisition costs the applicant shall:

1. Contact the Office of Green Acres, Department of Environmental Protection, [1301 Parkside Avenue, Trenton, New Jersey 08638, (609) 292-2241] **CN 412, Trenton, New Jersey 08625-0412, (609) 588-3450**, concerning the proposed acquisition and select appraisers from a list supplied by the Office of Green Acres in accordance with the following schedule:

i-ii. (No change.)

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

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT Radioactive Mixed Wastes

Proposed Amendments: N.J.A.C. 7:26-8.2 and 12.3

Authorized By: Christopher J. Daggett, Commissioner,

Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 022-89-04.

Proposal Number: PRN 1989-222.

Submit comments by June 30, 1989 to:

Daren R. Eppley, Esq.

Division of Regulatory Affairs

New Jersey Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection ("Department") is proposing to amend the exemption for radioactive waste in the State's hazardous waste rules, at N.J.A.C. 7:26-8.2(a)4, in order to specify that the hazardous waste portion of a mixture of nonradioactive hazardous waste mixed with radioactive waste is subject to State regulation as hazardous waste. The Department is also proposing to add N.J.A.C. 7:26-12.3(j) to allow hazardous waste facilities to obtain existing facility status if they become subject to N.J.A.C. 7:26-12 permitting requirements because of a change in State Law that occurs after the facility is in existence.

Solid waste containing radioactive waste mixed with hazardous waste (referred to as "radioactive mixed waste") is regulated under three statutes and the rules promulgated pursuant thereto. The hazardous waste component of the mixture is regulated by the Department pursuant to the State's Solid Waste Management Act, N.J.S.A. 12:1E-1 et seq., and by the United States Environmental Protection Agency (USEPA) pursuant to the Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq. The radioactive component is regulated by the Federal Nuclear Regulatory Commission (NRC) under the Atomic Energy Act, 42 U.S.C. §2011 et seq.

There has been some confusion about whether radioactive mixed wastes are to be managed as radioactive waste or as hazardous waste. Under the proposed amendments, mixed wastes would be fully regulated as both radioactive and hazardous waste. Although the radioactive portion of radioactive mixed waste remains exempt from hazardous waste regulation, the nonradioactive hazardous waste portion is fully regulated under the State's hazardous waste rules. As a result, in order to comply with State hazardous waste rules, generators of these mixtures would be required to obtain USEPA identification numbers, to use a manifest when the radioactive mixed waste is transported off-site, to file annual reports, and to comply with the other generator requirements. Generators who meet the requirements of N.J.A.C. 7:26-8.3 will be regulated as small quantity generators. Transporters of these radioactive mixed wastes would be required to register with the Department, undergo background investigations, and to comply with other hazardous waste transporter requirements. Hazardous waste facilities that accept these wastes would have to meet the requirements of all relevant Federal laws and Federal regulations promulgated pursuant thereto at 10 C.F.R. Part 61, as well as the State hazardous waste rules. Facilities accepting radioactive mixed wastes for storage, treatment, or disposal would have to meet N.J.A.C. 7:26-12 permitting requirements and comply with the other requirements for hazardous waste facilities. These proposed amendments would bring the State into equivalence with a recent Federal interpretation regarding the appropriate regulation of radioactive mixed wastes.

The proposed addition at N.J.A.C. 7:26-12.3(j) would allow a hazardous waste facility to obtain existing facility status as defined at N.J.A.C. 7:26-1.4, pending final disposition of its hazardous waste facility permit application, when construction or operation of that facility commenced after November 1, 1980, but before the effective date of the specific provision of the State rules that requires that facility to have a permit pursuant to N.J.A.C. 7:26-12. However, this provision does not apply for hazardous waste facilities which have been denied a treatment, storage, or disposal facility permit, those which have had existing facility status terminated, or those facilities failing to file for existing facility status under N.J.A.C. 7:26-12.3(i).

Social Impact

The regulation of radioactive mixed wastes will have a positive social impact by assuring the general public that hazardous wastes mixed with radioactive wastes are being properly treated, stored, and disposed. Although the proposed amendments affect all generators, transporters, and hazardous waste facilities involved with radioactive mixed waste, by retaining authorization of the State's hazardous waste management program under RCRA, the regulated community would avoid dual, State-Federal, regulation.

Economic Impact

The proposed amendments may result in an adverse economic impact on those hazardous waste generators, transporters, and facilities that were not aware of their obligations to manage the hazardous portion of mixed radioactive waste under the new federal interpretation of the existing exclusion for radioactive wastes. These hazardous waste generators, transporters, and facilities may experience increased costs associated with regulatory compliance. However, the State is required by USEPA to provide for the regulation of the hazardous waste portion of these mixed radioactive wastes in order to retain authorization for the hazardous waste management program under RCRA.

Environmental Impact

The proposed amendments will have a positive environmental impact. They will ensure that the hazardous waste portion of radioactive mixed waste is fully regulated as hazardous waste.

Regulatory Flexibility Statement

The proposed amendments would apply to persons generating, transporting or facilities treating, storing or disposing of radioactive mixed waste, that is, waste containing components of both radioactive and hazardous waste. These amendments may impact a number of "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to comply with these proposed amendments, small businesses will have to comply with the requirements set forth in the summary above. In doing so, it is likely that small businesses will incur costs associated with their activity. Generators, unless they meet the small quantity generator exemption, will have to obtain an EPA identification number, manifest off-site transport, file annual reports and comply with other generator requirements. Transporters will have to register with the Department, undergo a background investigation and comply with hazardous waste transporter requirements. Facilities accepting radioactive mixed waste will be required to meet all Federal laws and regulations (10 C.F.R. Part 61) in addition to the State's hazardous waste rules. In developing these amendments, the Department has balanced the need to protect the environment against the economic impact of the proposed amendments and has determined that to minimize the impact of the proposed amendments would endanger the environment, public health, and public safety; therefore, no exemption from coverage is provided.

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

7:26-8.2 Exclusions

(a) The following materials are not regulated as hazardous wastes for the purpose of this subchapter:

1.-3. (No change.)

4. Source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended 42 U.S.C. §2011 et seq. **This exemption does not include, however, the hazardous waste portion of mixtures of radioactive wastes.**

5.-21. (No change.)

(b) (No change.)

7:26-12.3 Existing facilities

(a)-(i) (No change.)

(j) **A hazardous waste facility that is required to obtain a hazardous waste facility permit pursuant to this subchapter solely because of a State statutory or rule amendment effective after the facility initially commenced operation may be eligible for existing facility status provided the owner or operator of the facility complies, and thereafter remains in compliance, with all existing facility requirements under this section within 180 days of the facility's becoming subject to this subchapter. This provision shall not apply to any hazardous waste facility that has been denied a hazardous waste treatment, storage, or disposal facility permit, whose existing facility status has been termin-**

ated, or a facility subject to (i) above. To be eligible for existing facility status, within 180 days after becoming subject to this subchapter, an owner or operator of a newly regulated hazardous waste facility shall:

- i. Notify the United States Environmental Protection Agency as required by Section 3010 of the Federal Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.);
- ii. File a Part A application for the facility in accordance with N.J.A.C. 7:26-12.2(d); and
- iii. Operate the facility in accordance with N.J.A.C. 7:26-9 and 11.

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Interim Status Standards for Closure and Post-Closure Care of Hazardous Waste Treatment, Storage and Disposal Facilities

Proposed Amendments: N.J.A.C. 7:26-10.6 and 11.3

Authorized By: Christopher J. Daggett, Commissioner,
Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 020-89-04

Proposal Number: PRN 1989-217.

Submit comments by June 30, 1989 to:

Daren R. Eppley, Esq.
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The United States Environmental Protection Agency (EPA), implementing the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq., promulgated final regulations concerning "Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities," at 52 FR 8704-8709 on March 19, 1987, which conform certain closure and post-closure care requirements for surface impoundments at RCRA facilities with interim status with those requirements for facilities which have received their final operating permits. As an authorized state under RCRA, New Jersey is required to modify its rules to reflect changes to the Federal program or demonstrate that its rules are already equivalent.

The new Federal regulations, at 40 C.F.R. §265.228(a)(1), require the owner or operator of a surface impoundment to "remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless §261.3(d) of this chapter applies . . ." 40 C.F.R. §261.3(d) describes criteria under which certain solid wastes, which would otherwise be defined as hazardous waste under 40 C.F.R. §261.3(c), are not to be considered hazardous under the Federal regulations.

The new Federal regulations apply health based standards to the removal or decontamination (clean closure) process. This approach is currently being examined by EPA in a broad range of regulatory contexts for both the RCRA and Superfund programs. In approving a clean closure, the EPA and the New Jersey Department of Environmental Protection (Department) must be certain that no hazardous constituents remain that could harm human health or the environment. To provide the necessary level of assurance, EPA is requiring owners or operators to remove all wastes and contaminated liners and to demonstrate that any hazardous constituents left in the subsoils will not cause unacceptable risks to human health or the environment.

Presently, New Jersey's requirements for closure and post-closure care of surface impoundments, at N.J.A.C. 7:26-11.3(e), direct the owner or operator to "comply with the requirements of N.J.A.C. 7:26-10.6(h)2 through 5" at closure. The proposed amendment to N.J.A.C. 7:26-11.3(e) would require the owner or operator to comply with N.J.A.C. 7:26-10.6(h)1 through 6 and would amend N.J.A.C. 7:26-10.6(h)1 through 4. These amendments establish equivalency with the Federal surface impoundment closure requirements at 40 C.F.R. §265.228.

The proposed amendment retains the basic format of the existing rule at N.J.A.C. 7:26-10.6(h). In most cases, New Jersey requires removal of decontamination (clean closure) for closure of surface impoundments. However, New Jersey continues to allow "entombment" (closure/post-closure) in specific cases described at N.J.A.C. 7:26-10.6(h)2 and (h)3.

N.J.A.C. 7:26-10.6(h)1 is amended to allow the owner or operator the option of decontaminating various materials, instead of requiring their removal. In addition, paragraph (h)1 is being amended to clarify that existing surface impoundments closing in accordance with paragraph (h)1 shall also comply with paragraph (h)4. The latter amendment is not a new requirement but a clarification of existing requirements.

N.J.A.C. 7:26-10.6(h)1iii is broadened to specify the removal or decontamination of all contaminated containment system components (including liners), instead of liners only.

N.J.A.C. 7:26-10.6(h)1iv is amended to include removal of contaminated subsoil and contaminated groundwater, as well as underlying and surrounding contaminated soil, at closure.

N.J.A.C. 7:26-10.6(h)1v is added to specifically require the removal or decontamination of all structures and equipment contaminated with hazardous waste and leachate.

N.J.A.C. 7:26-10.6(h)2ii is amended to require the removal or solidification of free liquids in surface impoundments which are to undergo closure by containment and permanent entombment. Also, "waste and waste residues" is being replaced with hazardous waste and hazardous waste residues.

N.J.A.C. 7:26-10.6(h)2vii is amended to require the owner or operator to design the final cover so as to promote drainage as a means of preventing erosion or damage to the final cover.

N.J.A.C. 7:26-10.6(h)3 is amended to specify that the final cover have a permeability less than or equal to the permeability of any bottom liner system present, natural or artificial.

N.J.A.C. 7:26-10.6(h)4ii is amended to include underlying and contaminated soil, contaminated groundwater, and hazardous waste residue as materials which must be addressed in the post-closure contingency plan required by this section. This amendment is also required in order to be consistent with N.J.A.C. 7:26-10.6(h)1.

Social Impact

The proposed amendments will have a positive social impact. They will bring the Department's closure and post-closure requirements for interim status facilities into conformance with requirements for permitted facilities and will bring facility requirements into conformance with the Federal regulations, thereby avoiding the necessity of dual, Federal-State regulation. The amendments will result in the State's hazardous waste rules being more protective of public health and the environment.

Economic Impact

The proposed amendments may have a limited economic impact. Owners or operators of interim status facilities are being offered an option of decontamination for closure of surface impoundments. This option may, in certain cases, prove to be more economically attractive than closure with long term post-closure care. However, by expanding and clarifying the items which must be removed or decontaminated at closure, costs for closures may be increased.

Environmental Impact

The proposed amendments will have a positive environmental impact. By bringing the Department's closure and post-closure requirements for interim status facilities into conformance with those for permitted facilities, and by bringing the facility requirements into conformance with the Federal regulations, the amendments will provide for an environmentally sound and protective alternative for closure of surface impoundments at all facilities. The amendments will also assure that, under the removal option, all wastes are removed, and that the removed wastes are handled as hazardous unless proven to be non-hazardous.

Regulatory Flexibility Analysis

These proposed amendments would affect hazardous waste treatment, storage, or disposal facilities managing hazardous wastes in surface impoundments. Many businesses impacted by these amendments are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to comply with these amendments, the small businesses will have to comply with the requirements set forth in the Summary above. Because the amendments requiring removal or decontamination of all wastes, contaminated containment system components, contaminated subsoil, contaminated groundwater, and contaminated structures and equipment at closure, facilities will likely incur

substantial capital costs for additional professional services presently required for closure, including additional costs for design of the closure plan, removal or decontamination, and disposal. However, the entombment option remains for interim status facilities. In developing these amendments, the Department has balanced the need to protect the environment against the economic impact of the amendments and has determined that to minimize the impact of the rule would endanger the environment, public health, and public safety; therefore, no exemption from coverage is provided.

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

7:26-10.6 Surface impoundments

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

(h) An owner or operator of a surface impoundments shall comply with the following closure requirements:

1. Unless (h)2 below applies, at closure the owner or operator shall remove [the following] from the impoundment **or decontaminate the following, except that existing surface impoundments closing in accordance with this paragraph shall also comply with (h)4 below:**

i.-ii. (No change.)

iii. [The liner; and] **Any contaminated containment system components including, among other things, the liner;**

iv. Underlying and surrounding contaminated soil, **contaminated subsoil, and contaminated groundwater; and**

v. **Structures and equipment contaminated with hazardous waste and leachate.**

2. For existing surface impoundments [(as defined in N.J.A.C. 7:26-1.4)], which do not comply with (b)1 above and which have not received acute hazardous waste (H) listed in N.J.A.C. 7:26-8.15(a)5 or toxic waste (T) listed in N.J.A.C. 7:26-8.15(a)6, the removal of the materials specified in (h)lii and liii above may be deferred pending the approval by the Department of a containment plan for a total, permanent entombment of referenced materials in such a fashion that no release of contaminants into the environment shall occur during the post-closure period. In order to obtain such approval, the owner or operator shall:

i.-ii. (No change.)

iii. [Stabilize] **Eliminate free liquids by solidifying or removing liquid hazardous wastes and stabilize** remaining [waste or waste residues] **hazardous waste and hazardous waste residues** to a bearing capacity sufficient to support final cover;

iv.-vi. (No change.)

vii. [Prevent] **Design the final cover so as to promote drainage and prevent** run-on and run-off from eroding or otherwise damaging the final cover; and

viii. (No change.)

3. [for] **For** existing surface impoundments that will be closed in accordance with (h)2 above, the owner or operator shall place final cover over the surface impoundment which will provide long-term minimization of migration of liquids into the closed impoundment. The final cover shall **have a permeability less than or equal to the permeability of any bottom liner system present, natural or artificial, and function [into] with** minimum maintenance and consist of the following:

i.-iii. (No change.)

4. For existing surface impoundments that will be closed in accordance with (h)1[,] above, the following requirements shall also be complied with:

i. (No change.)

ii. Owner or operator [must] **shall** prepare a contingent post-closure plan under N.J.A.C. 7:26-9.9 for complying with this section in case not all **underlying and surrounding contaminated soil, contaminated subsoils, contaminated groundwater and hazardous waste residue** can be practicably removed at closure.

iii. (No change.)

5.-6. (No change.)

7:26-11.3 Surface impoundments

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

(e) At closure, the owner or operator shall comply with the requirements of N.J.A.C. 7:26-10.6(h)2]1 through [5]6.

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

(a)

DIVISION OF ENVIRONMENTAL QUALITY Volatile Organic Substances in Consumer Products Proposed Amendments: N.J.A.C. 7:27-23.2, 23.3, 23.4, 23.5

Authorized By: Christopher J. Daggett, Commissioner,
Department of Environmental Protection.
Authority: N.J.S.A. 13:1B-3 and 26:2C-1 et seq., specifically
N.J.S.A. 26:2C-8.

DEP Docket Number: 016-89-04.

Proposal Number: PRN 1989-221.

A **public hearing** concerning these proposed amendments will be held on:

June 5, 1989 at 10 A.M.

Herrmann Lewis Labor Education Center Auditorium

Ryders Lane

Cook College Campus

Rutgers University

New Brunswick, New Jersey 08903

Submit written comments by June 9, 1989 to:

Gary J. Brower, Esq.

Division of Regulatory Affairs

New Jersey Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

Copies of this notice and of the proposed amendments are being deposited and will be available for inspection during normal office hours until May 31, 1989 at:

Atlantic County Health Department

201 South Shore Road, Room 4378

Northfield, New Jersey 08225

Middlesex County Air Pollution Control Program

280 Hobart Street, Room 518

Perth Amboy, New Jersey 08861

Warren County Health Department

108 West Moore Street

Hackettstown, New Jersey 07840

New Jersey Department of Environmental Protection

Division of Environmental Quality

401 East State Street, Second Floor

Trenton, New Jersey 08625

New Jersey Department of Environmental Protection

Bureau of Enforcement Operations

Northern Regional Office

1259 Route 46

Parsippany, New Jersey 07054

New Jersey Department of Environmental Protection

Bureau of Enforcement Operations

Southern Regional Office

20 Clementon Road, 3rd Floor North

Gibbsboro, New Jersey 08026

New Jersey Department of Environmental Protection

Bureau of Enforcement Operations

Metropolitan Regional Office

2 Babcock Place

West Orange, New Jersey 07052

New Jersey Department of Environmental Protection

Bureau of Enforcement Operations

Central Regional Office

Twin Rivers Professional Building, Route 33

East Windsor, New Jersey 08520

These amendments will become operative 60 days after adoption by the Commissioner (see N.J.S.A. 26:2C-8).

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (the Department) is proposing amendments to N.J.A.C. 7:27-23, Volatile Organic Substances in Consumer Products, hereinafter referred to as subchapter 23. This subchapter controls the emission to the atmosphere of volatile

organic substances (VOS) from consumer products. The Department is proposing to add several categories of architectural coatings and appropriate VOS content limits to the subchapter. These amendments are proposed as part of the Department's continuing effort to attain the National Ambient Air Quality Standard (NAAQS) for ozone, as well as efforts to promote national and regional consistency in rules affecting architectural coatings.

Volatile organic substances, in the presence of sunlight, participate in the formation of ozone and other reactive pollutants. Ozone is a known respiratory irritant seriously affecting those with chronic respiratory illnesses. Further, it significantly reduces the yield of important food crops and causes degradation of plastics and rubber. Control strategies for reducing atmospheric ozone concentrations are primarily directed toward the control of emissions of VOS.

The concentration of ozone in the ambient air in New Jersey during the late spring and summer often exceeds the NAAQS for ozone established by the Federal government to protect human health and welfare. This standard was exceeded in New Jersey on 45 days between May and September, 1988. The highest recorded concentration of ozone for that time period was 0.22 parts per million (ppm), nearly twice the NAAQS of 0.12 ppm average for one hour.

Subchapter 23 controls emissions of VOS by limiting their use in certain products. Architectural coatings are one of these products. They are permitted to contain only a certain level of VOS content. The amount of VOS allowed in a given architectural coating is dependent on the type of coating, its composition and use.

Architectural coatings are used to paint or coat items such as buildings, walls, bridges, fences, and billboards. They have several components: pigments, binders, additives, and solvents. Pigments are small, hard particles in a coating which give it color, conceal surfaces, and impart certain mechanical properties to the dried film. Typical pigments are inorganic oxides. Binders are the solids which form the bulk of the dried film. Acrylics and epoxies are two types of binders. Additives are chemicals added to a coating in small quantities to enhance certain properties, such as pigment dispersion or dried film gloss. Solvents are used to dissolve or disperse the other components so they can be easily spread on a surface. It is the solvent portion, and sometimes the additives, of an architectural coating which may consist of VOS.

The initial proposal of subchapter 23 on August 15, 1988, which appeared at 20 N.J.R. 2002(a), contained definitions and VOS content limits for 29 categories of architectural coatings. In the interest of national consistency, these categories and their corresponding limits were substantially similar to those in effect in California and proposed by the New York Department of Environmental Conservation (NYDEC). The Department had studied both California's and NYDEC's respective rules and had proposed similar rules. Subsequent to the proposal of the Department's rules, NYDEC adopted its rules with numerous changes. Based on the Department's analysis of those changes and of the comments received during the public comment period, 14 of the VOS limits that had been in the proposed rules were adopted with modifications deemed appropriate. The limits currently contained in the subchapter are consistent with those enacted by NYDEC. Other category definitions and VOS limits were not adopted at that time to allow for further consideration of the information submitted during the comment period, as well as information from other sources. The consideration of whether initially proposed categories should be added and whether suggestions for different new categories were appropriate has been completed. As a result of that process, VOS limits are being proposed for 13 categories that the Department believes should be incorporated into the subchapter.

In addition to definitions for the categories presently being proposed, commenters had requested that the categories of "reflective liquids", "four-color systems" and "durable graphics" be added to the rules. From the information available to the Department, "four-color systems" and "durable graphics" are factory-applied coatings. They are already covered by N.J.A.C. 7:27-16.5 which applies to industrial sources of VOS emissions. Subchapter 23 does not cover their use. As for "reflective liquids", they fall into the category of "traffic coating" and the Department knows of no problems with this type of coating in other areas where they are covered by similar rules.

Commenters to the original proposed rules requested changes to the definitions of "waterproof sealer" and "air freshener". As the category was under consideration, the definition of "waterproof sealer" was not adopted. The proposed definition for "waterproofing sealer" is identical to that initially proposed and does not include references to performance standards as suggested by commenters. No rule already in effect in any other state includes performance standards, so the Department is not

including them in order to maintain consistency. As to "air freshener", products which primarily function as disinfectants are not included in the definition and the Department believes no further clarification is needed. However, in order to ensure that colognes, aftershave and the like are not included, a minor change to the definition is being proposed.

Calcimine coatings were mentioned by one commenter as needing special treatment. Depending on drying time, calcimine coatings would fall either into the category of "primer, sealer, and undercoater" or "quick-dry primer, sealer, undercoater". Insufficient information was provided to the Department to determine which is most appropriate. The Department does not know of any difficulties such coatings have with meeting whichever is the applicable limit in effect in New York. Since the New Jersey limits are virtually identical, no need is seen for a special category.

The VOS content limits being proposed for inclusion in subchapter 23 are consistent with those in effect in New York. The information submitted during the comment period for the initial proposed rules was compared with information that NYDEC received on its proposed rules. The Department has determined that the evidence available supports VOS limits at the levels proposed.

The categories proposed for addition to the rules will have a compliance date approximately two months later than that applicable to the first round of categories. This is to compensate for the time between the proposal of the initial rules and the proposal of these additional categories while instituting changes prior to the 1990 peak ozone season.

If the VOS content of a product exceeds the applicable limit, manufacturers of architectural coatings are expected to achieve compliance with subchapter 23 through reformulation. The proposed VOS content limits have been set at levels achievable with present technology. In many cases, complying coatings are already on the market. Some complying coatings, not presently on the market, have been developed and are ready for market production. In 1984, in conjunction with the NYDEC, the Department performed a survey of manufacturers marketing coatings in New Jersey. The results of the survey indicate that of the architectural coatings sold in the State which are in the proposed additional categories, approximately 62 percent already meet the proposed VOS limits.

The technologies that exist for reformulation of architectural coatings include waterborne coatings, and high solids. Many pigments and binders are not soluble in water. Therefore, manufacturers of waterborne coatings often must use additives or revised manufacturing methods for production. Architectural coatings with high solids content, that is, a high percentage of pigment and binder, may need a change in manufacturing method or raw materials.

N.J.A.C. 7:27-23.3(a) and 23.4(a) are being amended to clarify that the prohibition against offering products for sale is intended to include not only those products physically on display, but also products held or stored in the stockroom for later sale.

In addition to adding categories to the rules, an exemption for small-size containers is being proposed for inclusion in N.J.A.C. 7:27-23.3(c). Containers of less than a quart (0.95 liters) in size will not be subject to the requirements of the rules. This will allow the continued availability of specialty coatings used for small-scale projects and of aerosol paints. These types of architectural coatings make up less than 10 percent of the market for coatings and therefore do not make a significant contribution to VOS emissions from this source category. The size cutoff chosen is consistent with that in effect in New York, and is slightly smaller than that in California, where containers of one liter (1.1 quarts) or less are exempt. However, reducing this exemption to 500 milliliters (0.55 quarts) is under consideration by the California Air Resources Board (CARB).

A test method for determining compliance with N.J.A.C. 7:27-23.4 is not being proposed at this time. A standard method for use with aerosols has not yet been developed. When such a method is developed, the Department will propose it for inclusion in the subchapter.

The Department is proposing a change to the labeling requirements for architectural coatings. Terms other than VOS can be used as long as they include every compound in that product that is a VOS. This will reduce the cost of compliance and make it easier for manufacturers to ensure that proper labels are on the containers marketed in New Jersey.

The provisions of N.J.A.C. 7:27-23.5(c) are being amended. This subsection currently provides an exemption from labeling requirements for products which must register under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§136 et seq. The proposed amendments will require manufacturers of these products to apply to the United States Environmental Protection Agency for necessary registration amendments for label changes and time will be allowed for this process to be completed. These provisions are similar to those in effect in New York.

Social Impact

The proposed additional limits are designed to control emissions of VOS which are part of a mixture of pollutants that react to form ozone in the outdoor atmosphere. The Federal government has established an NAAQS of 0.12 ppm averaged hourly for ozone. Attainment of this standard will have a positive social impact by alleviating the effects of exposure to elevated ozone concentrations on the inhabitants of New Jersey.

Exposure to ozone in concentrations greater than the NAAQS causes a decrease in the pulmonary functions in humans and may cause lung damage. Ozone also increases the ability of an inhaled infectious virus to survive within the lung. A reduction of the ambient ozone concentration in New Jersey will produce a corresponding reduction of respiratory problems associated with exposure to the current ambient ozone concentrations. This is even more urgent in light of recent evidence that indicates that the NAAQS for ozone may not be set low enough to prevent injury to human health.

The range and variety of architectural coatings available to consumers in some of the categories may be somewhat reduced by the requirements of this subchapter. However, the VOS limits proposed for inclusion in this subchapter are expected to cause the least disruption to the architectural coatings market, while providing the most environmental benefit.

Some consumers in California believe waterborne coatings are inferior to those containing higher levels of VOS. However, evidence indicates that fine architectural coatings of both types are available to consumers, and that the solvent used in the formulation is not a good indicator of performance.

Economic Impact

Information received by the Department on the initial proposal of VOS limits for architectural coatings indicated that an increased economic burden on manufacturers and distributors would result if these limits were not consistent in New Jersey and New York. The limits being proposed are consistent with those in effect in New York. Therefore, they should not impose economic costs on industry in excess of those incurred for developing a single complying formulation for each product.

The costs that will be incurred for reformulating architectural coatings subject to subchapter 23 will depend on the type of coating and the extent of the VOS reduction needed to meet the applicable limit. These costs were previously estimated in the initial proposal of this subchapter. A CARB report estimated the total changeover costs to be \$3.1 million for a facility producing two million gallons of coating a year. This is approximately \$1.50 in capital costs per gallon of coating produced. Amortized over 10 years, annual costs come to \$0.18 per gallon. This cost estimate does not include savings or costs attributable to changes in the raw materials or process used, or from final disposition of old equipment.

It is difficult to compare the relative costs of complying coatings not yet on the market and existing solvent-borne architectural coatings. The CARB report, which compared the cost of waterborne and solvent-borne coatings being sold in the State, was prepared in 1977. At that time, they found that, on average, the cost of a gallon of waterborne coating was approximately 10 percent lower than for the same type of coating in a solvent-borne formulation. The average difference in cost was \$1.25.

However, there are too many factors involved to state that these numbers will be substantially similar in this case. Raw materials can be more or less expensive for waterborne coatings. Water is less expensive than VOS, but additives needed to make pigments and binders soluble in water can add to the cost. The manufacturing process for waterborne coatings can be more or less difficult than for solvent-borne coatings, thus affecting the cost. Regional or local competition affects the price of a gallon of architectural coating when it is offered for sale. Inflation does not affect all items to the same degree and may have had a greater effect on one type of coating. All of these, as well as other factors, make it impossible to determine the overall impact of reformulation on the cost of a gallon of architectural coating, although it is not expected to be significant.

High solids content coatings are likely to be more expensive than low solids, high VOS content coatings available now. However, this type of coating will cover more area. The overall cost to cover a given area should not increase dramatically.

The proposed changes in the labeling requirements may reduce the cost of compliance with these rules by allowing manufacturers to use terms acceptable in other states.

Environmental Impact

The reduction in VOS emissions that will result from the inclusion of these additional categories of architectural coatings in subchapter 23 will provide progress toward attainment of the NAAQS for ozone. This will alleviate the effects of exposure to elevated ambient concentrations of ozone on the environment of New Jersey.

Foliar damage to sensitive plants is one of the earliest and most obvious manifestations of ozone injury in the environment. Subsequent effects include reduced plant growth and decreased crop yield. A reduction in the ambient ozone concentration will help relieve damage to plants and thereby improve agricultural productivity and support healthier growth of both natural vegetation and ornamental plantings.

Materials such as rubber, textiles, dyes and paints are susceptible to ozone degradation. The damaging effect of ozone is due to its oxidizing ability. For example, natural rubbers and synthetic polymers become hard and brittle at a faster rate by oxidation at high ozone concentrations than by oxidation by atmospheric oxygen. Attainment of the ozone ambient air quality standard is expected to mitigate the increased rate of degradation of natural and man-made materials.

In the initial proposal of subchapter 23 in August, 1988, it was estimated that 5,250 tons of VOS would be prevented from being emitted to the atmosphere each year from the wide variety of coatings being included. Because not all of those limits were adopted, only 3,600 tons of the estimated reduction was achieved by the rules. When these additional categories and limits go into effect, these categories will result in approximately 1,630 additional tons of VOS being prevented from reaching the atmosphere. This estimate is considered to be conservative, because several large manufacturers were not included in the 1984 survey on which the estimate is based and the volume of architectural coatings sold in New Jersey has increased every year since 1984.

Regulatory Flexibility Analysis

These amendments will apply to manufacturers, distributors, sellers, and users of architectural coatings. The major impact will be on manufacturers who must produce and market complying coatings. Distributors and sellers can purchase coatings from anyone supplying complying coatings. Users should see only complying products on the shelves.

Nationwide, approximately 70 percent of all architectural coating manufacturers are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This percentage is assumed to be true for New Jersey. Therefore, roughly 50 manufacturers of architectural coatings located in New Jersey are small businesses.

Compliance with this subchapter may require a small business to reformulate its products. The changes in production that may result could require the purchase of new equipment. A consultant may be necessary to help in the development of complying formulations. However, in some cases, raw material suppliers offer assistance for this type of work. Because a high percentage of the coatings marketed in New Jersey are already in compliance with the rules, it is likely that the products offered by many small businesses are in compliance and will require no further changes, other than to the label. Labeling is estimated to be less than \$5,000 per product in total costs. For a small business that needs to reformulate and buy new equipment, the costs that could be incurred have been estimated at \$3 million. It is believed that actual costs will be much less.

The effectiveness of these rules depends upon the degree to which affected coatings marketed in New Jersey comply with the standards proposed. An exemption based on the size of the company producing the product could leave up to 50 percent of the architectural coatings in these categories exempt from the rules. The Department has balanced the need to protect the environment against the economic impact of these amendments and has determined that to minimize the impact of the rule would endanger the environment, public health and public safety, and, therefore, no exemption from coverage can be made.

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

7:27-23.2 Definitions

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

...

"Air freshener" means any product available to a direct consumer which is marketed for the purpose of masking odors, providing a scent, or deodorizing, including, but not limited to, sprays, wicks, powders, and crystals. This does not include [personal bodily hygiene] products for use on the human body.

"All others" means any coating which does not meet any other architectural coating definition.

"Flat architectural coating" means any coating which registers a gloss of 15 or less on a glossmeter held at an 85 degree angle to the coated surface or less than five on a glossmeter held at a 60 degree angle, or which is labeled as a flat coating.

"High heat resistant coating" means any coating formulated specifically for use in high temperature applications. These coatings are designed to withstand temperatures in excess of 400 degrees Fahrenheit.

"Opaque stain" means any stain not classified as a semitransparent stain.

"Quick-dry primer, sealer, and undercoater" means any primer, sealer or undercoater which is intended to be applied to the surface of a substrate to perform one or more of the following functions: provide a firm bond between the substrate and subsequent coats; seal fire, smoke, or water damage; block stains; or condition porous surfaces; and which dries to touch within one-half hour and can be recoated in two hours, as determined by ASTM-D-1640, or other method approved by the Department based on a study of comparability data.

"Semitransparent stain" means any coating which is formulated to change the color of a surface but not conceal or change the texture of the surface.

"Waterproofing sealer" means any coating formulated for the sole purpose of protecting porous substrates by preventing the penetration of water.

7:27-23.3 Architectural coatings

(a) Effective January 1, 1990 for Group I coatings and effective February 28, 1990 for Group II coatings, no person shall sell, offer for sale, hold for sale, provide, apply, or manufacture for sale within New Jersey any architectural coating which contains more than the applicable limit of VOS per volume of coating, excluding water and any colorant added to tint bases, as [given] allowed in Table 1 in (e) below.

(b) (No change.)

(c) The provisions of (a) and (b) above shall not apply to architectural coatings sold in:

1. New Jersey for shipment and use outside of the State. Documentation indicating the final destination of coating shipments shall be made available to representatives of the Department upon request.

2. Containers with a capacity of less than one quart (0.95 liter).

(d) (No change.)

(e) Table 1 contains the VOS content limits for architectural coatings:

TABLE 1

VOS CONTENT LIMITS FOR ARCHITECTURAL COATINGS

Type Of Architectural Coating	Maximum Allowable VOS Content Per	
	Volume Of Coating Excluding Water	
	Pounds Per Gallon	Kilograms Per Liter
Group I		
Bituminous pavement sealer	0.8	0.10
Bond breaker	5.0	0.60
Concrete curing compound	2.9	0.35
Dry fog coating	3.3	0.40

[Sealer, primer, and undercoater Industrial maintenance [coatings]	2.9	0.35]
primer or topcoat	3.8	0.45
Mastic texture coating	1.7	0.20
Metallic pigmented coating	4.2	0.50
Non-flat[s] architectural coating	3.2	0.38
Primer, sealer, and undercoater	2.9	0.35
Roof coating	2.5	0.30
Swimming pool coating	5.0	0.60
Traffic coating	2.1	0.25
Waterproof mastic coating	2.5	0.30
Wood preservative coating[s]	4.6	0.55

Group II

Fire retardant coating		
opaque	4.2	0.50
all others	7.1	0.85
Flat architectural coating	2.1	0.25
High heat resistant coating	5.4	0.65
Lacquer	5.7	0.68
Multicolored coating	5.0	0.60
Quick-dry primer, sealer, undercoater	4.2	0.50
Shellac		
clear	6.1	0.73
pigmented	4.6	0.55
Sign paint	3.8	0.45
Stain		
semitransparent	4.6	0.55
opaque	2.9	0.35
Tile-like glaze coating	4.6	0.55
Varnish	3.8	0.45
Waterproofing sealer	5.0	0.60
All others	2.1	0.65

7:27-23.4 Air fresheners

(a) Effective February 28, 1990, no person shall sell, offer for sale, hold for sale, use, or manufacture for sale within New Jersey any air freshener which, at the time of sale or manufacture, contains greater than 50 percent VOS by weight.

(b) (No change.)

7:27-23.5 Labeling requirements

(a) For architectural coatings subject to the requirements of N.J.A.C. 7:27-23.2, the following shall apply:

1. (No change.)

2. The label or a sticker affixed to the label shall carry the following statement:

"This product contains a maximum of x pounds of VOS per gallon of coating."

i. Where x is the maximum pounds of VOS in a gallon of the architectural coating as produced by that manufacturer, excluding water and after any recommended thinning. [In no case shall x exceed the applicable legal limit From Table 1.]

(b) (No change.)

(c) For labeling purposes only, terms other than VOS may be used provided that the volatile organic content level cited on the label is an accurate reflection of VOS content as defined in this subchapter.

[(c)](d) The provisions of (a) and (b) above shall not apply to any consumer product [whose label is] registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§136 et seq., provided an application for any registration amendment necessary for compliance with this subchapter is filed with EPA prior to the product's compliance date as established by N.J.A.C. 7:27-23.3(a). A copy of this application shall be simultaneously submitted to the Assistant Director, Enforcement Element, Division of Environmental Quality, CN027, Trenton, New Jersey 08625. Those products for which an application for an amended registration has been submitted in a timely manner are exempt until such time as the amendment request has been approved by EPA. Within 30 days of receipt of notice of EPA action on an amendment request, a copy of that notice will be supplied to the Assistant Director, Enforcement Element, at the address specified above.

HEALTH

(a)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations

Graduate Medical Education

Proposed Amendment: N.J.A.C. 8:31B-3.22, 3.23, and 3.24

Proposed New Rule: N.J.A.C. 8:31B-3 Appendix XI

Authorized By: Molly Joel Coye, M.D., M.P.H. Commissioner,
Department of Health (with approval of the Health Care
Administration Board).

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

Proposal Number: PRN 1989-212.

Submit written comments by May 31, 1989 to:

Alan N. Rosenberg, Director
Hospital Reimbursement
New Jersey Department of Health, Room 601
CN 360
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Health proposes a new method of reimbursement for the direct patient care costs of Graduate Medical Education (GME) that would add teaching costs through an individualized factor based on number of programs and types of residents.

The present system reimburses direct patient care costs through recognition of three distinct peer groups, major teaching, minor teaching, and non-teaching. Differing standards are struck for each peer group. Under the proposed amendments reimbursement for Direct Patient Care Costs will be based on DRG rates which are adjusted to reflect their residency mix by specialty program, based on the methodology in Appendix XI.

Social Impact

Educational costs will be assigned more directly to the DRGs affected by the residency programs. Reimbursement, which is proportionate to the number and type of residency programs, will moderate the inequities sometimes associated with assignment to a peer group.

Economic Impact

Statewide, the changes in reimbursement for GME will be budget-neutral, with the exception of an additional \$2.35 million for Family Practice Residency programs. Compared to reimbursement levels under the Peer Group system, hospitals in the minor and major teaching groups will experience declines or increases in revenue under the proposed system. For hospitals, this system will remove the indirect financial advantages for institutions at the low edge of any group, and the financial disadvantages to those at the high edge. For non-teaching hospitals, reimbursement will be based on Statewide averages, as it now is, so there will be minimal changes for these hospitals.

Regulatory Flexibility Statement

The proposed rules apply only to the hospitals that have rates established by the Hospital Rate Setting Commission. Each of these hospitals has more than 100 full-time employees, and therefore, does not fall into the category of small business as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

8:31B-3.22 Standard costs per case

(a) [Pursuant to N.J.A.C. 8:31B-3.5 various standards will be determined including incentive standards.] The [incentive standards] **standard** to be used in the calculation of the proposed PCB for each inpatient DRG [are] is determined as the mean non-physician direct patient care costs per case in all [teaching and non-teaching] hospitals [,] whose costs are included in the data base, adjusted for labor market differentials **and amount and type of Graduate Medical Education**. Standards shall be calculated across all hospitals for which current cost bases were derived from a common reporting period.

(b) Classification of Teaching (Major and Minor) and Non-Teaching Hospitals for purposes of determining indirect costs shall be as follows:

1. Teaching hospitals are defined as those hospitals which, during the current cost base reporting period, meet all the following requirements:

i. Four or more residencies approved by the [Liaison Committee as Graduate Medical Education (LCGME)] **Accreditation Council for Graduate Medical Education (ACGME)** or the American Osteopathic Association (AOA), of which at least two are in the following five clinical services:

- (1) Internal Medicine;
- (2) General Surgery;
- (3) Family Practice;
- (4) Pediatrics;
- (5) Obstetrics and Gynecology.

ii. A minimum of 45 full-time equivalent residents in all approved residencies combined;

iii. Twenty-five full-time equivalent residents must be in the five clinical services listed in (b)li(1) through (5) above, and half of these residents (at least 12.5 full-time equivalents) must be in Internal Medicine, Family Practice and/or Pediatrics. The hospital must have the principal [residences] **residencies** for these core areas and not just rotating residencies.

2. Minor teaching hospitals are defined as those hospitals which, during the current cost base reporting period, meet all of the following requirements:

i. Two or more residencies approved by the [LCGME] **ACGME** or AOA, of which at least one occurs in the following five clinical services:

- (1) Internal Medicine;
- (2) Family/General Practice;
- (3) Pediatrics;
- (4) Obstetrics and Gynecology;
- (5) Surgery.

ii. A minimum of 15 full-time equivalent residents in all approved residencies combined;

iii. Nine full-time equivalent residents in the six clinical services listed above with at least five FTEs in Internal Medicine and/or Family Practice.

3. However, a hospital may also qualify as a [Minor] **minor** teaching hospital if all 15 residents are in at least one [LCGME/AOA] **ACGME/AOA** approved residency program in a primary care field (Family Practice or Internal Medicine).

4. Hospitals may include flexible first year or rotating internships in the total number of full-time equivalent residents. These residents are not to be counted in the core programs of Internal Medicine, Surgery, Family Practice, Pediatrics, and Obstetrics and Gynecology.

5. Hospitals, because of their specialized acute nature, having a majority of active medical staff in specialties which have an [LCGME] **ACGME** approved residency may apply to the Commissioner for teaching status pursuant to N.J.A.C. 8:31B-3.51 through 3.62.

6.-7. (No change.)

8. **Hospitals not meeting the criteria for major teaching or minor teaching status will be considered non-teaching for purposes of indirect reimbursement.**

(c) **Methodology for determining hospital-specific direct patient care rate adjustments for graduate medical education (GME) shall be as follows:**

1. **In order to be eligible for GME reimbursement, hospitals must submit each year, before the issuance of rates, documentation that attests to current accreditation for all programs for which accrediting bodies exist.**

2. **For all programs which have maintained the appropriate accreditation, and have a minimum number of residents equal to the years in that program necessary for it to receive accreditation, direct patient care costs associated with Graduate Medical Education will be calculated for each inpatient DRG as described in (c)2i to vi below, and added to the PCB:**

i. All DRGs will be assigned to one of four mutually-exclusive residency categories: Medicine, Surgery, Pediatrics and OB/GYN. Assignment will be determined by the specialty of the resident who would, in most New Jersey teaching hospitals, have principal responsibility for care of a patient in a given DRG. Appendix XI, which is hereby incorporated by reference, lists these DRG assignments. Ancillary and Family Practice residency categories will be related to all DRGs.

ii. For Medicine DRGs, rates will be increased using the methodology described in Appendix XI C.I.

iii. For Surgery DRGs, rates will be increased using the methodology described in Appendix XI C.II.

iv. For Pediatrics and OB/GYN DRGs, rates will be increased using the methodology described in Appendix XI C.III.

v. The rates for all DRGs in hospitals with Ancillary Residency programs will be increased using the methodology described in Appendix XI C.IV. and V.

vi. The rates for all DRGs in hospitals with Family Practice Residency programs will be increased using the methodology described in Appendix XI C.VI.

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

[(d)] (e) Calculation of standards will be as follows:

1. The calculation of standards will be based on the group of hospitals first receiving a PCB or other appropriate sample of hospitals thereafter. The cost per case of each hospital's patients with UB-PS records categorized by inpatient DRGs [are] is multiplied by each hospital's equalization factor [.] ([See] see N.J.A.C. 8:31B-3.24(c)) and for the appropriate DRGs and hospitals, reduced by a rate expressing the amount and type of Graduate Medical Education (see Appendix XI) for the hospital pertaining to each DRG. The mean equalized cost of all such records in [teaching or non-teaching] all hospitals [respectively] calculated after teaching costs have been removed from hospitals' Preliminary Cost Bases, is the incentive standard for each DRG. [Other standards to be calculated shall be, but not limited to, the Efficiency Standard (median cost per case) or lowest cost per case in a hospital which has treated more than 10 patients. (See N.J.A.C. 8:31B-3.5.)]

2. (No change.)

8:31B-3.23 Reasonable direct cost per case

(a) Inpatient direct cost per case is determined as follows:

1. The reasonable Direct Cost Per Case (DRG) of the Preliminary Cost Base for those hospitals receiving rates in accordance with [these regulations] this subchapter determined for [teaching and non-teaching] all hospitals, for every DRG with greater than five merged patients and shall include incentives and disincentives, as appropriate, which shall be termed the boundaries of payment and are calculated as follows:

degree of confidence x labor market standard, calculated after teaching costs have been removed from hospitals' Preliminary Cost Bases, x the amount and type of Graduate Medical Education
plus

(1 - degree of confidence) x hospital current non-physician direct cost per case

plus

hospital current physician patient service cost per case

i.-iv. (No change.)

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

8:31B-3.24 Reasonable indirect patient care costs

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

(c) The reasonable amount of indirect costs (exclusive of skilled nursing apportionment) will be determined for those hospitals that will receive an initial PCB. Disincentive amounts will be calculated in the Physician and Teaching Related Centers. The screening methodology will compare base year actual cost data. Screens will not be applied to sales and real estate taxes, outside collection costs, employee health insurance and malpractice insurance. The above indirect costs are not considered volume variable and are therefore included in the Preliminary Cost Base spread to all rates through the use of the overhead mark-up factor.

1.-2. (No change.)

3. The costs used to calculate these peer group indirect standards will be the 1985 approved indirect costs plus 1986 Commission-approved indirect costs which are approved as continuous adjustments. The imputed value of pending 1986 appeals are included in the calculation of the standard unit cost. The standard will not be recalculated except for the inclusion of statewide generic issues affecting one or more peer groups. The hospitals will receive the Commission-approved 1986 indirect costs, as it effects the hospital specific portion of the blended rate, at Final Reconciliation. If a loss of program accreditation would result in a hospital's reclassification into a lower peer group, that change will be implemented in the rate year following the program loss. If as a result of an appeal a hospital moves to a higher peer group, its reimbursement will change, based on the existing standard unit cost of the new peer group into which it moves.

4.-6. (No change.)

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

Appendix XI

Reimbursement Methodology for Graduate Medical Education

A. Certain residency programs that do not involve direct patient care responsibilities are considered ancillary for purposes of direct patient care cost determination. Adjustments made for these programs will apply to all DRGs. Ancillary programs include:

1. Anatomic & Clinical Pathology
2. Blood Banking
3. Chemical Pathology
4. Dermatopathology
5. Hematopathology
6. Neuropathology
7. Nuclear Medicine
8. Nuclear Radiology
9. Pathology
10. Blood Banking
11. Chemical Pathology
12. Forensic Pathology
13. Radiation Oncology
14. Radioisotopic Pathology
15. Radiology, Diagnostic
16. Radiology, Therapeutic

B. All DRGs will be assigned to one of four residency categories for purposes of calculating the direct costs associated with Graduate Medical Education. The assignments are as follows:

I. Medicine

(a) Included programs:

1. Internal Medicine
2. Allergy and Immunology
3. Cardiovascular Disease
4. Dermatology
5. Dermatopathology
6. Endocrinology and Metabolism
7. Flexible First Year/Transitional
8. Gastroenterology
9. Hematology and Oncology
10. Infectious Disease
11. Nephrology (Renal Disease)
12. Neurology
13. Physical Medicine and Rehabilitation
14. Preventive Medicine
15. Pulmonary Diseases (Medical Diseases of the Chest)
16. Rheumatology
17. Psychiatry
18. Child Psychiatry

(b) Included DRGs:

009-025, 027-029, 031-032, 034-035, 078-080, 082-090, 092-097, 099-102, 104, 106, 112, 115-118, 121-136, 138-145, 172-183, 188-189, 202-208, 240-248, 256, 271-273, 277-278, 283-284, 294-297, 299-301, 316-317, 395, 397-399, 403-404, 409-414, 416, 418-421, 423, 425-432, 447, 449-450, 452-455, 462-467, 473, 475, 701-702, 704-705, 707-708, 710-711, 713-714, 735-736, 743-751.

II. Surgery

(a) Included programs:

1. Anesthesiology

- 2. Neurological Surgery
 - 3. General Surgery
 - 4. Colon and Rectal Surgery (Proctology)
 - 5. Dentistry
 - 6. Emergency Medicine
 - 7. Hand Surgery
 - 8. Musculoskeletal Oncology
 - 9. Ophthalmology
 - 10. Oral/Maxillofacial Surgery
 - 11. Orthopedic Sports Medicine
 - 12. Orthopedic Surgery
 - 13. Otolaryngology (Otorhinolaryngology/Orofacial Plastic Surgery)
 - 14. Pediatric Orthopedic Surgery
 - 15. Pediatric Surgery
 - 16. Plastic Surgery
 - 17. Thoracic Surgery
 - 18. Urology
 - 19. Vascular Surgery, General.
- (b) Included DRGs:
 001-2, 004-8, 036-047, 049-069, 071-073, 075-077, 103, 105, 107-111, 113-114, 119-120, 146-171, 185-187, 191-201, 209-239, 249-251, 253-254, 257-270, 274-276, 280-281, 285-293, 302-315, 318-321, 323-326, 328-329, 331-332, 334-342, 344-352, 392-394, 400-402, 406-408, 415, 424, 439-445, 456-461, 468, 471-472, 476-477, 730-734, 741-742.

III. Obstetrics/Gynecology

(a) Included program: Obstetrics/Gynecology.

(b) Included DRGs: 353-384.

IV. Pediatrics

(a) Included programs:

- 1. Pediatrics
- 2. Child Neurology
- 3. Neonatal-Perinatal Medicine
- 4. Pediatric-Cardiology
- 5. Pediatric Endocrinology
- 6. Pediatric Hematology/Oncology
- 7. Pediatric Nephrology.

(b) Included DRGs:

026, 030, 033, 048, 070, 074, 081, 091, 098, 137, 184, 190, 252, 255, 279, 282, 298, 322, 327, 330, 333, 343, 396, 405, 417, 422, 446, 448, 451, 600-700, 712, 737-740, 752.

V. Family Practice

(a) Applied to all DRGs.

C. Methodology

I. Medical programs:

The regression equation will consist of:

The dependent variable, defined as the ratio of actual cost per case, by DRG, for each hospital with a Medical teaching program and the Statewide average non-teaching cost per case, by DRG, for all hospitals without teaching programs;

The first independent variable defined as the number of internal medicine programs (one or zero) per 5,000 †case-mix adjusted discharges; the second independent variable defined as the number of other medical programs per 5,000 †case-mix adjusted discharges.

The adjustment to the standard portion of the DRG rates will equal: for hospitals with an Internal Medicine program, the slope of the first independent variable adjusted for the Y-intercept times the ratio of 5,000 to the actual number of †case-mix adjusted discharges, plus the slope of the second independent variable times the number of other medical programs per 5,000 †case-mix adjusted discharges.

For hospitals without an Internal Medicine program the Y-intercept plus the slope of the second independent variable times each program per 5,000 †case-mix adjusted discharges.

II. Surgical programs:

The regression equation will consist of:

The dependent variable, defined as the ratio of actual cost per case, by DRG, for each hospital with a Surgical teaching program and the Statewide average non-teaching cost per case, by DRG, for all hospitals without teaching programs;

The independent variable, defined as the number of programs per 5,000 †case-mix adjusted discharges.

The adjustment to the standard portion of the DRG rates will equal: for the first program per 5,000 †case-mix adjusted discharges the slope adjusted for the Y-intercept, and the additional programs the slope times each program per 5,000 †case-mix adjusted discharges.

III. Obstetrics/Gynecology and Pediatrics programs:

The standard portion and the DRG rates will be adjusted by a ratio between the costs per DRG for hospitals with teaching programs and the costs for hospitals that have none.

Adjustments for Obstetrics/Gynecology and Pediatrics will be applied to those DRGs listed in Appendix XIB III. and IV., respectively.

IV. Ancillary programs:

The standard portion and the DRG rates will be adjusted by a ratio between the costs per DRG adjusted for Medical, Surgical, OB/GYN, and Pediatric teaching for teaching hospitals with ancillary programs and the costs adjusted for Medical, Surgical, OB/GYN and Pediatrics teaching for teaching hospitals that have no ancillary programs.

Adjustments for Ancillary Programs will be applied to all DRGs.

V. Other Adjustments

In order to maintain base year budget neutrality for all programs except Family Practice, the difference between actual costs of teaching hospitals and the predicted costs derived by application of the above formulae will be apportioned over the adjustments for each specialty area as well as for ancillary programs.

VI. Family Practice

Hospitals with accredited Family Practice residency programs will have their rates increased by a Family Practice supplement calculated as follows:

A ratio consisting of the total number of Family Practice residents in the base year divided by the total number of residents in all accredited GME programs in the same year

times

The Statewide standard costs, adjusted for teaching, of all accredited teaching programs minus the non-teaching standard for all DRGs in teaching hospitals

divided by

The standard direct patient care costs of all DRGs in hospitals with a Family Practice program.

The standard portion of direct patient care rates for all DRGs of hospitals with an accredited Family Practice residency program will be multiplied by the Family Practice supplemental factor plus one.

†Case-mix adjusted discharges = the hospital's number of inlier cases by DRG times the Statewide average cost per case for discharges within the appropriate groupings divided by the Statewide cost per case for inlier discharges in all DRGs times the hospital's actual number of outlier discharges.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Computerized Tomography (CAT/CT) Services

Proposed Readoption: 8:33G

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

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

Proposal Number: PRN 1989-214.

Submit comments by May 31, 1989 to:

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

The agency proposal follows:

Summary

The 1971 Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., as amended, requires the Department to assure that New Jersey's hospital and related health care services are of the highest quality, of demonstrated

need, efficiently provided and properly utilized at a reasonable cost. To implement this public policy, the Act gave the Department of Health broad responsibilities in regulating the health care system through authorization of the Certificate of Need Program.

The Department initially adopted Computerized Tomography (CAT/CT) Standards, N.J.A.C. 8:33G, effective on February 23, 1977. These rules have been amended periodically to respond to the increased clinical acceptance of this imaging modality. The intent of these rules, as amended over the years, continues to be the identification of standards and criteria to be used by the Department of Health, the Statewide Health Coordinating Council, and the local health planning agencies to effectively judge applications for CT services throughout the State. Pursuant to Executive Order No. 66 (1978), N.J.A.C. 8:33G expires on July 20, 1989.

Many changes have occurred in health care over the 12 years that these rules have been in effect and amendments have been adopted over these years to reflect these clinical changes. The Department has reviewed the present rules and determined that no major revisions are necessary to reflect changes in the availability of this imaging modality. In order to avoid expiration of these rules pursuant to Executive Order No. 66 (1978) and to maintain continuity in the certificate of need process for CAT/CT services, the re-adoption of these rules without change is now being proposed.

Social Impact

N.J.S.A. 26:2H-1 (as amended) recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising costs of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and health care services, and health facility cost containment programs . . ."

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

The rules proposed for re-adoption are intended to promote the provision of CAT/CT services in a cost-effective manner at a level appropriate to the needs of the patient. The continued need for the provision of efficient and effective CAT/CT services, and particularly the need for criteria to review additional CAT/CT services at existing or new health care facilities, requires the retention of existing Statewide policies as contained in the existing CAT/CT rules.

Economic Impact

The economic impact of CAT/CT services is largely dependent on the ability of the imaging modality to provide clinically useful information compared to other existing imaging modalities. To a large extent, the clinical utility of CAT/CT has been clearly determined during the past decade. The average annual operating cost of CAT/CT facility remains considerable, however, requiring an appropriate level of utilization to provide efficient and effective diagnostic CAT/CT services.

The CAT/CT unit is estimated to cost from \$500,000 to \$1.5 million, depending on the type of unit selected and the number of optional capabilities that are selected by the provider. Appropriate site selection and facility renovation can cost a facility an additional \$200,000 to \$500,000 or more depending on the capabilities desired. The productive life of the CAT/CT unit is estimated to be approximately five years.

Extension of existing rules will permit the Department of Health to continue to evaluate the orderly development of CAT/CT services on the basis of documented community need as required in the standards and criteria contained at N.J.A.C. 8:33G.

Regulatory Flexibility Analysis

This proposed re-adoption will for the most part be applicable to hospitals which employ well over 100 employees. It is possible, however, that smaller entities that are not specifically affiliated with hospitals will be considered as CT providers under these rules. The requirements contained in this proposed re-adoption do require personnel to perform a number of functions at a CAT/CT facility in order to provide a safe and effective CAT/CT service. An ability to perform some degree of re-

cordkeeping, reporting or other compliance requirements are being proposed by this re-adoption. Such recordkeeping and data reporting will not require dedicated staff and should not be considered overly burdensome to the applicants that may be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The rules are necessary to preserve the public health by ensuring that capital expenditures are made only for needed health care facilities and resources. Varying compliance of these rules solely upon facility size would be at odds with this statutory purpose.

Full text of the proposed re-adoption appears in the New Jersey Administrative Code at N.J.A.C. 8:33G.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need Policy Manual for the Review of Rehabilitation Hospitals and Comprehensive Rehabilitation Services

Proposed New Rules: N.J.A.C. 8:33M

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

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

Proposal Number: PRN 1989-213.

Submit comments by May 31, 1989 to:
John A. Calabria, Chief
Health Systems Review Program
New Jersey Department of Health
CN 360, Room 604
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

Certificate of need review for facilities providing inpatient rehabilitation services is required under the Health Care Facilities Planning Act of 1971, N.J.S.A. 26:2H-1 et seq. Until the present time, certificate of need determinations for rehabilitation hospitals have been based primarily on guidelines contained in the State Health Plan Element for physical rehabilitation services. During 1988, the Department of Health convened an advisory committee to review and make recommendations regarding a revised Plan Element as well as licensure standards and certificate of need rules for rehabilitation. The proposed chapter that follows contains the certificate of need rules, reflecting criteria to be used by the Department of Health in evaluating applications for new or expanding facilities to provide comprehensive rehabilitation services.

Major provisions of the proposed new rules include the following:

N.J.A.C. 8:33M-1.1 describes the types of facilities that may provide comprehensive rehabilitation services and that may thus be classified and licensed by the Department of Health as rehabilitation hospitals. It also contains requirements to be met by facilities that wish to be considered for "grandfathering" by the Department as rehabilitation hospitals; such facilities will be expected to demonstrate that their provision of comprehensive rehabilitation services pre-dated the adoption of the proposed chapter, N.J.A.C. 8:33M.

N.J.A.C. 8:33M-1.2 contains definitions of key terms, including the definition of "comprehensive rehabilitation."

N.J.A.C. 8:33M-1.3 explains that the licensing and certification requirements contained in N.J.A.C. 8:43H apply to all applicants receiving certificate of need approval for rehabilitation hospitals.

N.J.A.C. 8:33M-1.4 identifies those services that must be provided on-site by rehabilitation hospitals. This section also contains requirements for rehabilitative therapies and medical and nurse staffing.

N.J.A.C. 8:33M-1.5 stipulates the minimum size for rehabilitation hospitals. This provision is aimed at promoting the efficient use of health care resources. A distinction is made between the minimum size for freestanding rehabilitation hospitals and those that are located within another type of inpatient health care facility.

N.J.A.C. 8:33M-1.6 states the requirements that must be met by certificate of need applicants proposing to construct new rehabilitation hospitals or to add beds to existing facilities. This section identifies the batching cycles for rehabilitation hospitals, the manner in which com-

prehensive rehabilitation services will be regionalized in New Jersey, and the methodologies to be used in projecting the future need for adult and pediatric services.

N.J.A.C. 8:33M-1.7 contains requirements for admission and discharge policies aimed at preventing discrimination against certain types of patients, while assuring that rehabilitation hospitals will be utilized only by those patients who are capable of engaging in and benefitting from a comprehensive rehabilitation program.

The provisions of N.J.A.C. 8:33M-1.8 are intended to promote access to comprehensive rehabilitation among medically indigent patients, as well as patients whose care is reimbursed by Medicaid or Medicare.

N.J.A.C. 8:33M-1.9 states criteria that must be met by certificate of need applicants to assure the financial feasibility of their projects.

N.J.A.C. 8:33M-1.10 contains guidelines aimed at promoting geographical accessibility of comprehensive rehabilitation services, in view of the fact that approved facilities will be expected to meet the needs of the whole region (that is, the northern, southern, or central portion of the State).

Social Impact

The Department of Health anticipates that the proposed new rules will have a positive social impact in a number of respects. The recognition of facilities as rehabilitation hospitals in accordance with the criteria and requirements contained in this chapter should alleviate the longstanding public confusion over which institutions are qualified to offer comprehensive rehabilitation services. Until the present time, it has been possible for a variety of health care institutions to promote their rehabilitation services as being comprehensive in scope. However, in the absence of rules to assure that comprehensive rehabilitation programs maintain specific standards of care, it has been difficult for consumers and health care providers alike to ascertain the adequacy and quality of these programs.

Rehabilitation, by its nature, encompasses a wide range of disciplines and therapeutic modalities and may take place in a variety of settings. It may entail a relatively simple plan using a single form of treatment to achieve a specific functional outcome, or it may involve an extensive, long-term, multi-disciplinary program of the highest intensity that touches on virtually every aspect of an individual's life. In view of the multi-formity of needs for rehabilitation, it is appropriate that some level of rehabilitation service is provided by most types of health care facilities. However, it is recognized that there is a certain category of patients who will require and benefit most from an intensive program of inpatient care, to be known as "comprehensive rehabilitation," which will be provided exclusively in facilities licensed as rehabilitation hospitals.

The requirements contained in the proposed chapter are aimed at promoting the availability of high quality comprehensive rehabilitation services to the extent that they are needed throughout the State. Dividing the State into northern, southern, and central regions for planning purposes should result in improved geographical accessibility to care. Previously, the Department recognized only two planning regions: north and south). Regionalization, coupled with the establishment of minimum facility size (see N.J.A.C. 8:33M-1.5), will also have the benefit of assuring that each facility provides a sufficiently large volume of services to maintain both a broad scope of services and staff expertise in addressing patient care needs.

The proposed new chapter contains numerous provisions that are intended to promote access to care among patients who might otherwise have difficulty obtaining necessary treatment. For example, facilities receiving certificate of need approval will provide at least 35 percent of their adult patient days to Medicare patients and five percent to Medicaid patients (elderly Medicaid patients who require comprehensive rehabilitation typically have their care paid for by Medicare). Pediatric rehabilitation hospitals receiving certificate of need approval under the proposed rules will provide a minimum of 40 percent of their patient days to Medicaid patients. Facilities will be required to maintain written admission policies regarding non-discrimination against patients on the basis of ability to pay for care or against those who may be HIV-positive.

Rehabilitation hospitals typically treat a mix of patients, including young adults with brain and spinal cord injuries and older adults with severe impairments due to conditions such as cerebrovascular accidents (strokes), hip fractures, and neurological diseases. Pediatric rehabilitation hospitals predominantly admit patients with congenital birth defects and anomalies, such as cerebral palsy and spina bifida, or children who have experienced serious debilitation due to accidents. It is the Department's position that facilities approved as rehabilitation hospitals should be equipped and staffed to treat the full gamut of conditions that commonly

require comprehensive rehabilitation among either adult or pediatric patients. While it is recognized that some facilities might be able to develop programs to treat an exclusive patient population such as brain injured cases, this does not represent an efficient use of health care resources for comprehensive rehabilitation. Seemingly diverse illnesses and injuries result in a similar need for individualized treatment that is planned and implemented by a multi-disciplinary team, with a goal of improved functioning, productivity, and quality of life. Consequently, the proposed rules contain specific requirements for adult and pediatric rehabilitation hospitals, but do not encourage the proliferation of facilities that will treat patients with only one particular type of disease, deformity, or injury.

Consistent with the licensing standards for rehabilitation hospitals proposed in N.J.A.C. 8:43H elsewhere in this issue of the New Jersey Register, N.J.A.C. 8:33M contains service and staffing requirements intended to assure high quality care for patients with a wide array of conditions that are amenable to comprehensive rehabilitation. In addition to requiring that approved facilities provide a minimum of three hours of restorative therapies per patient, five days per week, the rules require at least one full-time physician per 20 patients. Furthermore, preference will be given to the approval of certificate of need applications containing rigorous documentation of a commitment to nursing care provided by clinical specialists in rehabilitation.

Economic Impact

The proposed new rules should not have a negative economic impact on any State agency. Implementation of N.J.A.C. 8:33M should result in the orderly development of cost-efficient comprehensive rehabilitation services in regionalized centers. The proliferation of small-scale programs, without regard to each region's overall need for the services, will be precluded (see N.J.A.C. 8:33M-1.5). Because it is costly to develop and maintain an extensive array of rehabilitation services, the public will benefit from the fact that beds will only be approved in accordance with their projected need (see N.J.A.C. 8:33M-1.6).

Facilities that currently provide comprehensive rehabilitation, as identified in N.J.A.C. 8:33M-1.1(e), will be considered for grandfathering by the Department of Health. As such, they will be authorized and licensed as rehabilitation hospitals without the need for certificate of need approval (however, all bed additions at the latter facilities will require the submission and approval of a certificate of need application). It is not anticipated that adoption of the proposed rules will result in any negative economic impact on these hospitals since there should be no disruption in the services they provide.

Regulatory Flexibility Analysis

In proposing the following rules, which entail recordkeeping and data reporting on the part of applicants for rehabilitation hospitals, the Department has had to balance the economic impact of added personnel costs with the need to provide safe and effective health care services. The Department of Health has determined that compliance with N.J.A.C. 8:33M will be necessary, without exception, for all facilities proposing to establish or to expand existing comprehensive rehabilitation services, as defined and described in these rules. In order to promote the orderly development of comprehensive rehabilitation services, the Department must assure that the proposed new rules will be equitably and uniformly applied regardless of the type or size of health care institution. However, since virtually all affected facilities will be hospitals employing more than 100 full-time workers, the impact on small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., should be negligible. The Department has determined that the rules are necessary to preserve the public health by ensuring that capital expenditures are made only for needed health care services. Varying the compliance requirements for small businesses would be at odds with this statutory purpose.

Full text of the proposed new rules follows.

CHAPTER 33M CERTIFICATE OF NEED: REHABILITATION HOSPITALS AND COMPREHENSIVE REHABILITATION SERVICES

SUBCHAPTER 1. REVIEW STANDARDS

8:33M-1.1 Scope and purpose

(a) The Department of Health is "designated as the sole agency in this State for comprehensive health planning" (N.J.S.A. 26:2H-1). The Health Care Facilities Planning Act stipulates that "no health

care facility shall be constructed or expanded, and no new health care services shall be instituted . . . except upon application for and receipt of a certificate of need" (N.J.S.A. 26:2H-7). Consequently, the rules contained in this chapter specify the certificate of need requirements for all new rehabilitation hospitals and for all existing rehabilitation hospitals proposing to alter their licensed bed complements.

(b) A rehabilitation hospital may be either a freestanding inpatient health care facility or one or more separate and distinct inpatient units within a health care facility that is licensed by the Department of Health to provide comprehensive rehabilitation services as defined in N.J.A.C. 8:33M-1.2. The facility shall provide both inpatient and outpatient rehabilitation services. The coordinated, multidisciplinary services provided in rehabilitation hospitals shall be aimed at ameliorating the effects of disabilities by maximizing individual and family functional capacities for independent, productive living.

(c) Comprehensive rehabilitation and inpatient rehabilitation services which are promoted or advertised as being comprehensive in nature shall be provided exclusively in health care facilities licensed by the Department of Health as rehabilitation hospitals. Only licensed rehabilitation hospitals shall bill patients and third party payers for inpatient rehabilitation services which are promoted or advertised as being comprehensive in nature.

(d) In the case of health care facilities that provide comprehensive rehabilitation as well as other types of health care services, only those beds located in separate and distinct units used exclusively for comprehensive rehabilitation shall be counted as part of the facility's rehabilitation hospital license.

(e) Upon written request to the Department of Health within 30 days of the effective date of this chapter, the following may be considered for authorization and licensure as rehabilitation hospitals:

1. Facilities providing comprehensive rehabilitation that are licensed by the Department as special hospitals, unless the special hospital has received a certificate of need stipulating that approved beds are not to be used for comprehensive rehabilitation;

2. That part of a general hospital containing one or more separate and distinct units with beds that have previously been licensed by the Department of Health as "medical-surgical (rehab)" beds; and

3. That part of any other health care facility which has an established program (that is, in operation for at least 12 months prior to the effective date of these rules) of inpatient rehabilitation services in compliance with the standards contained in N.J.A.C. 8:43H.

(f) Subsequent to the Department's determination regarding which of the facilities identified under (e) above will be authorized and licensed as rehabilitation hospitals, any providers seeking to alter their licensed complement of comprehensive rehabilitation beds or any other providers proposing to establish services that will meet the licensure requirements for comprehensive rehabilitation contained in N.J.A.C. 8:43H shall obtain certificate of need approval, in accordance with the rules contained in this chapter.

8:33M-1.2 Definitions

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

"Applicant" means the applicant for a certificate of need for comprehensive rehabilitation services.

"Comprehensive rehabilitation" means an intensive, multidisciplinary program of inpatient care designed to restore a disabled person to the highest attainable level of functioning and to provide new skills for successful adaptation to long-term impairments. It is offered primarily to patients who have recently experienced disability due to a congenital defect, acute illness or injury, or the exacerbation of a chronic illness or injury. Patients admitted to comprehensive rehabilitation programs are screened to assure that their treatment in the facility will result in demonstrably increased functional abilities and an improved quality of life after discharge from the institution, to an extent that would not generally be possible with treatment available from other types of health care facilities.

"Department" means the New Jersey State Department of Health.

"Environmental modification services" means a planned process of evaluation and adaptation of a patient's living environment as may be needed to permit maximum independent functioning.

"Freestanding rehabilitation hospital" means a facility that carries its own separate license from the Department of Health for comprehensive rehabilitation beds.

"Medicaid patient" means a patient whose care is paid for by Medicaid.

"Medically indigent patient" means a patient who lacks sufficient income and assets to pay in full or in part for comprehensive rehabilitation care (for example, income at or below the State Pharmaceutical Assistance for the Aged and Disabled (P.A.A.D.) guidelines) and who also lacks third party payment coverage (for example, Medicare, Medicaid, private insurance) for rehabilitation hospital care.

"Multidisciplinary program" means a collaborative, integrated process whereby health professionals from a variety of disciplines assess individual patients and work together as a team to establish each patient's plan of care and goals for that care. The team meets on a regular basis to review patients' progress, to modify goals as necessary, and to assure that patients' needs are being met. Members of the team either provide care directly to patients in accordance with their treatment plans, or are responsible for supervising other health care workers who provide such care.

"Physiatrist" means a physician who is either certified or eligible for certification by the American Board of Physical Medicine and Rehabilitation or by the American Osteopathic Board of Rehabilitation Medicine.

8:33M-1.3 Relationship between licensure and certificate of need requirements

The provisions of N.J.A.C. 8:43H, the Manual of Standards for Licensure of Comprehensive Rehabilitation Hospitals, are hereby incorporated by reference. Applicants receiving certificate of need approval for comprehensive rehabilitation beds shall comply with all applicable requirements of N.J.A.C. 8:43H.

8:33M-1.4 Facility personnel and service requirements

(a) Applicants shall document that they will provide services in such numbers and types to adequately meet the needs of the patient population. These services may be provided by staff employed directly by the facility or through contractual arrangements with other agencies or facilities. At a minimum, the rehabilitation hospital shall provide the following services on-site in the facility: audiology, dental, dietary, driver evaluation, environmental modification, laboratory, medical, nursing, nutritional counseling, occupational therapy, orthotic and prosthetic, pharmaceutical, physiatry, physical therapy, psychological, radiological, recreational therapy, respiratory therapy, sexual counseling, social work, speech-language pathology, and vocational testing and counseling.

(b) The rehabilitation hospital shall provide the following services on both an inpatient and an outpatient basis: audiology, dental, driver evaluation, environmental modification, laboratory, medical, nursing, nutritional counseling, occupational therapy, orthotic and prosthetic, pharmaceutical, physiatry, physical therapy, psychological, radiological, recreational therapy, respiratory therapy, sexual counseling, social work, speech-language pathology, and vocational testing and counseling.

(c) The applicant shall describe, to the satisfaction of the Department of Health, how the multidisciplinary program will be organized. This shall include an identification of personnel who will be included on the team, as well as members' roles and responsibilities. The applicant shall document how the multidisciplinary team will promote coordination of care for patients.

(d) The applicant shall document that combined rehabilitative therapies, excluding nursing care and physician services and including physical therapy and occupational therapy and/or speech therapy shall be provided for a minimum of three hours per patient per day five days per week. In the case of pediatric rehabilitation hospitals applicants shall document that combined rehabilitative therapies excluding nursing care and physician services and including at least two out of four modalities (that is, physical, occupational, speech and/or respiratory therapies), shall be provided for a minimum of three hours per patient per day, five days per week.

(e) The applicant shall provide documentation that the comprehensive rehabilitation program for adult patients will be under the direction of a full-time, Board-certified physiatrist. If the com

prehensive rehabilitation program is intended to treat pediatric patients, the applicant shall provide documentation that the program will be under the direction of a full-time, Board-certified pediatrician with a physiatrist available to all patients as needed. Medical staffing at a proposed rehabilitation hospital shall include, at a minimum, one full-time equivalent physiatrist per 20 adult patients. For pediatric patients, the proposed rehabilitation hospital shall be staffed, at a minimum, with one full-time equivalent pediatrician per 20 patients.

(f) Applicants shall describe nurse staffing patterns which shall include, at a minimum, one registered nurse on each nursing care unit, 24-hours per day. Priority shall be given to approving applications that provide documentation of a commitment to promoting high quality, specialized rehabilitation nursing. Applicants shall submit a detailed, specific plan for the recruitment, retention, and in-service education of nursing staff, including a description of any incentives that shall be provided by the hospital for the purpose of encouraging the facility's registered nurses to earn master's degrees from programs accredited by the National League of Nursing and/or to receive certification from the Association of Rehabilitation Nurses (or, in the case of pediatric facilities, from the National Board of Pediatric Nurse Practitioners and Associates or the American Nurses Association).

8:33M-1.5 Minimum size of facilities

(a) To promote the efficient use of resources, the minimum size for a new, freestanding rehabilitation hospital shall be 60 beds.

(b) The minimum size for a non-freestanding rehabilitation hospital that is located within another type of licensed health care facility shall be 30 beds.

1. An exception to the 30 bed minimum size for a non-freestanding rehabilitation hospital may be considered by the Department under the following circumstances, provided that all other applicable requirements of this chapter are met:

i. An existing, non-freestanding rehabilitation hospital proposes renovations or improvements in its physical plant that are necessary to meet the minimum State and Federal Life Safety Code requirements listed in N.J.A.C. 8:43H-23.1(a) and no change in the rehabilitation hospital's bed complement is proposed or necessary; or

ii. In regions where there is a need for fewer than 30 adult or pediatric rehabilitation beds, as documented by the need methodologies described in N.J.A.C. 8:33M-1.6(c), the Department of Health shall give consideration to approving applications that will improve access to high quality, cost efficient comprehensive rehabilitation services. Under no circumstance shall an application proposing a total complement of fewer than 20 comprehensive rehabilitation beds for either pediatric or adult patients be approved.

(c) Rehabilitation hospitals proposing to treat both pediatric and adult patients shall include a minimum of 30 beds for pediatric patients and 30 beds for adult patients, unless an exception is granted for a smaller number of pediatric or adult beds, as described above in (b)1ii. Pediatric and adult rehabilitation beds shall not be combined to achieve the minimum bed complement.

8:33M-1.6 Requirements for expansion and new construction

(a) Certificate of need applications for new rehabilitation hospitals or for bed additions to existing rehabilitation hospitals shall be filed with the Department in accordance with the batching cycles for comprehensive rehabilitation. Filing dates for these batching cycles shall be April 1 and October 1 of each year, beginning with that filing

5. The adult bed need formula is computed as follows:

i. STEP 1: For each region, each age group, each diagnostic category:

$$\frac{\text{Current acute hospital cases}}{\text{Current estimated population}} \times \text{Projected Population, Target Year} = \text{Projected Acute Care Cases for Target Year}$$

ii. STEP 2: For each region, each diagnostic category:

$$\frac{\text{Sum of Projected Acute Care Cases for All Specified Age Groups, Target Year}}{\text{Percentage of Patients Admitted to Rehab, Current Year}} \times \text{Average Rehab Length of Stay, Current Year}$$

$$365 \text{ Days} \times 85\% \text{ Desired Occupancy}$$

date which falls a minimum of 60 days subsequent to the effective date of the rules contained in this chapter.

(b) To promote the efficient provision of comprehensive rehabilitation, these services shall be provided by rehabilitation hospitals on a regional basis. The applicant shall therefore identify the proposed regional service area for any new or expanding rehabilitation hospital and shall provide documentation of how the facility will assure access to comprehensive rehabilitation for the population residing throughout that service area.

1. For certificate of need purposes, the regional service area proposed by an applicant shall be one of the following:

i. Northern region: Bergen, Passaic, Hudson, Essex, Morris, Sussex, Union, and Warren Counties;

ii. Central region: Hunterdon, Mercer, Middlesex, Monmouth, Ocean and Somerset Counties; or

iii. Southern region: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem Counties.

(c) New comprehensive rehabilitation beds shall be approved only in service areas where there is a documented, projected bed need.

1. Need projections shall be computed for that year which is four years from the time that a certificate of need application is accepted for processing.

2. For the purpose of computing bed need, the Department shall maintain an inventory of approved comprehensive rehabilitation beds for each service area, and these beds shall be subtracted from the projected number of beds needed in each service area. Approved comprehensive rehabilitation beds shall include those that are authorized and licensed as described in N.J.A.C. 8:33M-1.1(e) and all comprehensive rehabilitation beds that receive certificate of need approval.

3. Need projections shall be computed using the most recent available data from acute care hospitals (Uniform Bill—Patient Summary data maintained by the Health Research and Educational Trust of New Jersey), rehabilitation facilities (rehabilitation hospital utilization data—discharge abstracts, which are submitted by all facilities to the Department of Health), and the New Jersey Department of Labor (population projections).

4. The need methodology for rehabilitation beds for adult patients shall include the following factors:

i. The projected population for four age groups (that is, 20-44, 45-64, 65-74, and 75+) for each of the three regions (that is, north, central, south);

ii. The age rate of New Jersey acute care discharges per population for each group for each of eight diagnostic categories that are likely to require comprehensive rehabilitation (that is, amputation, arthritis, brain/head injury, hip fracture and replacement, back pain, multiple sclerosis, spinal cord injury, and stroke/hemiplegia);

iii. The percentage of discharged acute care cases that are treated in rehabilitation facilities for each of the eight categories listed in (c)4ii above;

iv. The projected number of rehabilitation cases by diagnosis for the target year;

v. The average length of rehabilitation stay for each of eight diagnoses and for an "all other" category;

vi. An adjustment factor to allow for a number of "other" rehabilitation cases, which are those patients with diagnoses other than the eight aforementioned categories; and

vii. An adjustment factor to allow for 85 percent occupancy of comprehensive rehabilitation facilities.

iii. STEP 3: For each region:

$$\frac{\text{Sum of Rehab Cases for All Specified Age Groups for Eight Diagnostic Categories, Target Year} \times \text{Percentage of "Other" Diagnoses Rehab Cases, Current Year} \times \text{Average Rehab Length of Stay "Other" Diagnoses}}{365 \text{ Days} \times 85\% \text{ Desired Occupancy}}$$

iv. STEP 4: For each region:

$$\text{Results of Step 2} + \text{Results of Step 3} - \text{Current Regional Bed Supply} = \text{Projected Bed Need Target Year}$$

6. To compute the need for rehabilitation beds for pediatric patients, the most recent available pediatric rehabilitation hospital discharge abstract data shall be analyzed in relation to population data for the corresponding year, in order to determine the total, Statewide rate of inpatient rehabilitation days for each of four pediatric population age groups. The four age groups are: zero to four years, five to nine, 10 to 14, and 15 to 19. For any year in which there is a disparity between the total, reported number of inpatient pediatric rehabilitation days based upon discharge abstract data and the total number of inpatient pediatric rehabilitation days reported by the Department's Center for Health Statistics in its annual report of inpatient utilization data, the aforementioned rates for each age group shall be uniformly adjusted to take into account the actual, total number of inpatient rehabilitation days provided to pediatric patients. The rates for each age group shall then be multiplied by the population projections for each of the age groups in each of the regions for the targeted year. The projected number of inpatient days shall then be adjusted (that is, divided) by a factor of .85 to allow for 85 percent occupancy of the beds. The latter, adjusted figure shall then be divided by 365 to yield the total number of pediatric beds needed in each region for the targeted year. Pediatric comprehensive rehabilitation beds that are part of the Department's inventory as described in (c)2 above shall then be subtracted from the total number of pediatric beds needed in each region for the targeted year, to yield the net bed need.

(d) In regions where there is no net projected bed need, according to the methodologies described in (c) above, the Department may give consideration to approving certificate of need applications for additional beds at rehabilitation hospitals that offer documentation of an occupancy rate in excess of 90 percent for a period of at least 12 months immediately prior to filing the application, providing that the applicant meets all other applicable requirements of this chapter including the minimum facility size requirements specified in N.J.A.C. 8:33M-1.5. The applicant shall only be approved for that number of beds which can be expected to result in an 85 percent annual occupancy rate during the 12 month period following licensure of the proposed, additional beds. The applicant shall submit documentation, to the satisfaction of the Department of Health, that patients' average length of stay at the hospital does not substantially exceed the statewide average for a comparable patient population.

(e) In regions where there is a net projected bed need, according to the methodologies described in (c) above, applicants proposing bed additions at existing rehabilitation hospitals in the service area shall provide evidence of an occupancy rate of at least 85 percent for the calendar year prior to submission of the certificate of need application. Bed additions at existing facilities with less than 85 percent occupancy of the comprehensive rehabilitation bed complement shall not be approved.

(f) In the case where a hospital's occupancy rate is less than 85 percent, an exception to (e) above may be made if the applicant is able to provide compelling documentation, to the satisfaction of the Department of Health, that the hospital will be able to achieve an 85 percent occupancy rate within one year of project implementation (that is, after the bed addition has been licensed). Compelling documentation shall include a detailed description of specific factors that have prevented the facility from achieving at least 85 percent occupancy, along with a description of how obstacles to the desired occupancy level will be eliminated.

(g) To assure continuity of care for comprehensive rehabilitation patients, applicants shall submit documentation of existing or anticipated transfer agreements and referral arrangements with acute care

hospitals, home health agencies, long term care facilities, and residential facilities (for example, residential health care facilities) throughout the proposed service area.

(h) Applicants shall submit a copy of proposed educational program materials pertaining to the care of HIV-infected patients, including documentation regarding how universal precautions shall be instituted in the proposed or existing rehabilitation hospital, to be used in training all health care staff. In addition, the applicant shall agree, as a condition of certificate of need approval, to enter into and maintain a formal affiliation with the Department's AIDS Division to assure follow-up and case management of patients who may be HIV-infected.

(i) The applicant's prior record of providing quality care, as determined by the Department's Division of Health Facilities Evaluation, shall be taken into consideration during the certificate of need review. Applicants with a record of significant licensure violations or deficiencies pertaining to patient care during the 12 month period prior to submission of the certificate of need application shall not be approved for bed additions nor for the construction of new rehabilitation hospitals. Significant violations or deficiencies are those in which the Department has taken action to revoke or suspend licensure, impose a fine, or curtail admissions in the areas pertaining to patient care (for example, nursing, infection control, pharmacy or dietary services).

8:33M-1.7 Patient admission and discharge policies

(a) Admission criteria and policies shall be developed by the facility and submitted as part of the certificate of need application. Patients in non-freestanding facilities shall be admitted separately into the rehabilitation hospital for statistical and costing purposes.

(b) Written admission policies shall, at a minimum, address each of the following:

1. Patient eligibility characteristics or factors specific to recognize rehabilitation diagnoses/conditions that will be treated at the facility. These diagnoses/conditions shall be consistent with the scope and intensity of services that the facility intends to provide;

2. Screening to assure that treatment in the facility will result in demonstrably increased functional abilities and an improved quality of life after discharge from the institution, to an extent that would not generally be possible with treatment available from other types of health care facilities. Only patients who are capable of engaging in and benefiting from this level of treatment shall be admitted;

3. Non-discrimination against patients on the basis of payment source for care;

4. Non-discrimination against patients who are known to be or who are suspected of being HIV-positive. As a condition of certificate of need approval, the facility shall agree to treat patients who meet the admission criteria for the facility and are HIV-positive; and

5. For those individuals who are deemed ineligible for admission to the facility, a description of how patients will be recommended for a more appropriate level of care.

(c) Discharge criteria shall be developed by the applicant and included as a part of the certificate of need application.

(d) The applicant shall submit documentation of a plan to provide job placement opportunities and referrals for those patients who desire employment after discharge from the facility.

(e) For each patient who is discharged from the hospital, the facility shall collect the following data to be reported to the Department of Health: patient's age, county of residence, referral source

length of stay, principal and secondary diagnoses, functional impairments on admission and discharge, payment source, discharge status and destination, and post-discharge service needs.

(f) The applicant shall submit documentation of the referral process that will be implemented to assure that patients will receive appropriate follow-up care after discharge from the facility. The facility shall establish and maintain a plan to assure that needed outpatient services will be arranged for patients residing within each county in the facility's service area.

8:33M-1.8 Accessibility of care for Medicaid, Medicare, and medically indigent patients

(a) On an annual basis, a minimum of five percent of the total patient days within a facility's adult comprehensive rehabilitation beds shall be utilized by Medicaid patients. This requirement shall be met within one year of project completion and/or license for a rehabilitation hospital and shall be maintained thereafter.

(b) On an annual basis, a minimum of 35 percent of the total patient days within a facility's adult comprehensive rehabilitation beds shall be utilized by Medicare patients. This requirement shall be met within one year of project completion and/or license issuance for a rehabilitation hospital and shall be maintained thereafter.

(c) On an annual basis, a minimum of 40 percent of the total patient days within a facility's pediatric comprehensive rehabilitation beds shall be utilized by Medicaid-eligible patients. This requirement shall be met within one year of project completion and/or license issuance for a rehabilitation hospital and shall be maintained thereafter.

(d) On an annual basis, a minimum of three percent of the total patient days within a facility's comprehensive rehabilitation beds shall be provided in the form of free and/or part-pay care to medically indigent patients. This requirement shall be met within one year of project completion and/or license issuance for a rehabilitation hospital and shall be maintained thereafter.

(e) The applicant shall provide documentation that written policies shall be maintained and enforced by the facility, stating that no patient will be discharged prior to completion of treatment as a result of the inability to pay for care.

(f) The Department shall give priority to the approval of certificate of need applications for rehabilitation hospitals that have at least a three year prior history of complying with the applicable requirements specified in (a), (b) and (c) above.

(g) The applicant for a certificate of need shall provide documentation, to the satisfaction of the Department of Health, of strategies that will be implemented by the rehabilitation hospital in order to promote and assure access to care for Medicaid-eligible patients who reside throughout the facility's service region.

8:33M-1.9 Financial feasibility and cost effectiveness

(a) Applicants for a certificate of need shall demonstrate the financial feasibility of proposed construction projects. A study shall be submitted by the applicant analyzing the feasibility of the project under the reimbursement rules that can reasonably be expected to be in effect at the time of implementation. A project may be determined financially feasible where the applicant can demonstrate to the satisfaction of the Department that there will be a net positive income in the calendar or fiscal years that are two and five years beyond project completion.

(b) Financial projections submitted as part of the certificate of need application shall provide evidence that income generated by operation of the proposed facility will be sufficient to cover the cost of service to the percentage of Medicaid, Medicare, and medically indigent patients specified in the application, or in accordance with N.J.A.C. 8:33M-1.7, whichever amount is greater.

(c) Financing of hospital construction, modernization/renovation, or major movable equipment projects shall require that at least 15 percent of the total project costs, including all financing and carrying costs, be available and applied in the form of equity, in accordance with N.J.A.C. 8:33-2.15.

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

(e) The applicant for a certificate of need for additional comprehensive rehabilitation beds shall submit documentation that appropriate alternatives to inpatient care have been considered and that the project as proposed will encourage the use of lower cost outpatient rehabilitative services, where such services are appropriate to meet patients' needs for care.

(f) Applicants for comprehensive rehabilitation beds that are proposed to be located within long-term care facilities shall submit projected fee schedules not only for rehabilitation services but also for long-term care services at the facility. Applications that propose a schedule of charges indicating that costs will be shifted from comprehensive rehabilitation patients to long-term care patients shall not be approved.

8:33M-1.10 Geographical accessibility of facilities and siting considerations

(a) In service areas where there is a need for additional comprehensive rehabilitation beds, priority shall be given to approving applications from facilities located in areas that will improve geographical accessibility for residents of the region. The evaluation of geographical accessibility shall include but not be limited to a consideration of the location of existing rehabilitation hospitals, population density of the service area, and driving time to existing and proposed rehabilitation hospitals in the service area.

(b) Where possible, each rehabilitation hospital shall be located in close proximity to public transportation routes.

(c) Documentation of the zoning status and the need for land use approvals for any site proposed for new construction shall be submitted by the applicant. Priority shall be given to the approval of certificate of need applications for projects located on sites that are likely to receive necessary zoning and land use approvals.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Rehabilitation Hospitals Standards for Licensure

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

Proposed Amendments: N.J.A.C. 8:43B-11.1 and 11.3

Proposed Repeal: N.J.A.C. 8:43B-11.4

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner,
Department of Health, with approval of the Health Care
Administration Board.

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

Proposal Number: PRN 1989-215.

Submit comments by May 31, 1989, to:
Wanda J. Marra, Coordinator
Standards Program
Division of Health Facilities Evaluation
New Jersey Department of Health
CN 367
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Hospitals providing comprehensive rehabilitation services are currently licensed by the Department of Health in accordance with the licensure rules specified in N.J.A.C. 8:43B, Manual of Standards for Hospital Facilities. This manual contains a subchapter, N.J.A.C. 8:43B-11, regarding "special hospitals"—a licensure category which extends to several different types of facilities, including rehabilitation facilities. Vagueness and lack of specificity, however, render the current rules unable to account for the special attributes of rehabilitation hospitals. Consequently, the Department proposes the adoption of new rules, N.J.A.C. 8:43H, for the licensure of rehabilitation hospitals. The proposed new rules, N.J.A.C. 8:43H, specify requirements for rehabilitation hospitals that take into account the unique goals, philosophy, and service delivery system which have evolved in the area of rehabilitation. Adoption of the proposed new rules would obviate the need for N.J.A.C. 8:43B-11 of the

current licensure rules for hospitals to apply to rehabilitation hospitals. Accordingly, the Department proposes amendments to the current rules at N.J.A.C. 8:43B-11.1 and 8:43B-11.3 which modify the text of the rules so as to exclude rehabilitation hospitals. The Department likewise proposes the repeal of the current N.J.A.C. 8:43B-11.4, which applies specifically to special hospitals for rehabilitation. Adoption of the proposed amendments, repeal, and new rules would establish a basis for the separate and distinct licensure of rehabilitation hospitals in accordance with N.J.A.C. 8:43H. At the present time, there are 11 facilities licensed as special hospitals which could be eligible for licensure as rehabilitation hospitals.

N.J.A.C. 8:43B has been in effect for more than 20 years, and many of the rules were promulgated by a program of the New Jersey State Department of Institutions and Agencies which is no longer in existence. More specific, quantifiable terminology and a restructured format have been used in the proposed new rules in order to encourage uniformity of interpretation by facilities and State representatives, with the goal of improving the enforceability of the rules. Proposed N.J.A.C. 8:43H acknowledges the specialization of the field of rehabilitation. It remedies omissions in the current rules concerning important areas of rehabilitation care, such as the rehabilitation therapies and rehabilitation supportive services, with emphasis upon multidisciplinary assessment and treatment planning which focus on the individual patient's abilities and disabilities.

Development of the proposed rules for licensure of rehabilitation hospitals, N.J.A.C. 8:43H, entailed research, study, and a series of meetings among representatives of various State agencies, representatives of rehabilitation facilities, and health care professionals, who comprise the New Jersey Comprehensive Rehabilitation Advisory Committee of the Department of Health. This advisory committee was convened by the Department in order to review and make recommendations regarding a revised Plan Element, Certificate of Need rules, and licensure rules.

The proposed rules, N.J.A.C. 8:43B, are designed to provide flexibility to the facilities in developing workable means of delivering comprehensive rehabilitation services to their patients, while protecting the health and safety of the patients. The proposed rules would allow the State's rehabilitation hospitals and the health care professionals working in them the opportunity to devise innovative, efficient, and effective methods of providing comprehensive rehabilitation services capable of improving the quality of care which their patients receive.

A summary of the proposed new rules follows:

The scope and purpose of the rules in this proposed chapter are set forth in proposed N.J.A.C. 8:43H-1. The proposed rules contain definitions of technical terms, many of which are the same as those for the terms in licensure rules developed by the Department for other types of health care facilities. There are, however, terms specific to rehabilitation hospitals which are defined for the purposes of this chapter and general terms which are defined from a rehabilitation perspective. Such rehabilitation-oriented definitions include definitions of "activities of daily living (ADL)," "environmental modification services," "sexual counseling services," and "patient treatment plan." The proposed subchapter also delineates the qualifications for the health care practitioners to which the proposed rules refer, including the various rehabilitation therapists.

Proposed N.J.A.C. 8:43H-2, Licensure Procedures, outlines procedures for obtaining licensure, which are similar to those for other types of health care facilities. Sections of proposed N.J.A.C. 8:43H-2 address the following: Certificate of Need; application for licensure; newly constructed or expanded facilities; surveys and temporary license; full license; surrender of license; and the fee schedule for filing an application for licensure; as well as the facility's right to a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Proposed N.J.A.C. 8:43H-3 lists the services which the facility must provide directly in the facility, as well as services which must be provided on an inpatient basis and on an outpatient basis. Audiology, dental, dietary, driver evaluation, environmental modification, laboratory, nursing, nutritional counseling, occupational therapy, orthotic and prosthetic, pharmaceutical, physiatry, physical therapy, psychological, radiological, recreational therapy, respiratory therapy, sexual counseling, social work, speech-language pathology, and vocational testing services must be provided directly in the facility. Driver training services must also be provided. The proposed subchapter requires job descriptions for all personnel. The facility is also required to maintain written staffing schedules. Proposed N.J.A.C. 8:43H-3.5 requires that the rehabilitation hospital develop and implement a policy and procedure manual to guide the organization and operation of the facility.

The responsibilities of the governing authority are outlined in proposed N.J.A.C. 8:43H-4. The governing authority retains legal responsibility for the management, operation, and financial viability of the facility. Responsibilities enumerated in the proposed rules include provision of a safe, adequately staffed and equipped physical plant.

Administration of the rehabilitation hospital is the subject of proposed N.J.A.C. 8:43H-5. The proposed subchapter requires the appointment of a full-time administrator who shall be available on the premises of the facility at all times and of a designee to act in the absence of the administrator. The proposed subchapter also enumerates responsibilities of the administrator.

Requirements for patient care policies for the facility are set forth in proposed N.J.A.C. 8:43H-6. This subchapter is intended to facilitate the delivery of patient care. The proposed subchapter requires the formulation of written patient care policies and procedures, including policies and procedures for the referral of patients to other health care providers and medical consultants, for the provision of sexual counseling services, and for the provision of environmental modification services. The proposed subchapter also contains a series of provisions intended to ensure that the patient and the family are fully informed of all financial arrangements.

Proposed N.J.A.C. 8:43H-7 concerns patient assessments and treatment plans and is formulated so as to reflect the multidisciplinary approach necessary for the provision of successful comprehensive rehabilitation services, with emphasis on continuity of care. A patient assessment, which becomes a basis for the development of a multidisciplinary patient treatment plan, is required for each patient. In addition to including orders for treatment or services, the patient treatment plan must include rehabilitation goals, time frames for achieving goals, and measures for assessing effects of treatment or services.

Proposed N.J.A.C. 8:43H-8, Medical Services, is the first of the proposed subchapters which discuss requirements for the specialized professional services to be offered by rehabilitation hospitals. The proposed rules require that medical services be provided to patients and that a full-time medical director be appointed. In accordance with proposed N.J.A.C. 8:43H-1.11, the medical director must be a Board-certified physiatrist, unless the facility provides services to pediatric patients only, in which case the medical director may be a Board-certified pediatrician. Proposed N.J.A.C. 8:43H-8 states that, if the medical director is a pediatrician, a full-time physiatrist must be available. In any case, a pediatrician must be available if the facility provides care for pediatric patients. The proposed subchapter also delineates the duties of the medical director.

The structure of proposed N.J.A.C. 8:43H-8 is shared by the proposed subchapter on nursing services, N.J.A.C. 8:43H-9. The proposed subchapter includes a requirement for the appointment of a director of nursing services, whose responsibilities include developing a quality assurance program for the service and assigning duties based upon education, training, competencies, and job descriptions. At least one registered professional nurse and one licensed nurse, excluding the director of nursing services, must be assigned to each nursing unit at all times. The proposed rules also stipulate that additional licensed nursing personnel and ancillary nursing personnel shall be provided in accordance with a systematic determination of nurse staffing levels on the basis of the acuity of patient need, thus allowing for individualized patient care rather than care based solely upon the number of patients in the facility. The specified responsibilities of licensed nursing personnel include assisting patients in activities of daily living based upon the patient's abilities, disabilities, and rehabilitation goals. In providing nursing care, licensed nursing personnel must act in accordance with the State of New Jersey Nursing Practice Act, N.J.S.A. 45:11-23 et seq.

According to proposed N.J.A.C. 8:43H-10, pharmaceutical services must be provided to patients. If a facility has an institutional pharmacy, the pharmacy must be licensed by the New Jersey State Board of Pharmacy and operated in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39. The facility must appoint a pharmacist to be responsible for the direction of the service, and this pharmacist's responsibilities include working together with a Pharmacy and Therapeutics Committee. The facility is required to have policies and procedures for implementation of a unit dose drug distribution system. The unit dose drug distribution system promotes the safe and proper use of medications and facilitates the provision of cost-effective care.

Proposed N.J.A.C. 8:43H-11 includes requirements for dietary services. Dietary services must be provided to meet the nutritional needs of patients. The facility must appoint a full-time dietitian, whose duties include providing nutritional counseling, to be responsible for the direction of

the dietary service. A full-time food service supervisor must also be appointed. Although dietitians are required to participate as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan, this participation does not entail attendance at all multidisciplinary team meetings.

Proposed N.J.A.C. 8:43H-12 contains rules for physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and audiology services. Patients must receive at least three hours of such services per day, five days per week. The proposed rules differentiate the case of the adult patient from the case of the pediatric patient with respect to the particular services which may account for the required three hours of services. Practitioners are responsible for participating as part of the multidisciplinary team in developing the patient treatment plan and for ensuring that patient care services are provided as specified in the respective care plans. The proposed rules require that physical therapy, speech-language pathology, and audiology personnel carry out their responsibilities in accordance with pertinent State practice acts. Driver evaluation services must be provided by occupational therapists.

Requirements for social work services and psychology services are specified in proposed N.J.A.C. 8:43H-13. The facility must appoint a full-time social worker and a psychologist to assume responsibility for the direction, provision, and quality of the social work service and the psychology service, respectively. Social workers and psychology staff members contribute to the rehabilitation of patients by providing care and by participating as members of the multidisciplinary team.

The requirements for a planned, diversified program of patient activities are delineated in proposed subchapter N.J.A.C. 8:43H-14, Recreational Therapy Services. The facility must provide both indoor and outdoor recreation. The recreation therapist responsible for the service must, among other specified duties, maintain a record of weekly recreational activities schedules.

Proposed N.J.A.C. 8:43H-15 recognizes the importance of rehabilitation supportive services by requiring that orthotic and prosthetic services, vocational testing, dental services, and laboratory and radiological services be provided directly in the facility by qualified personnel. Driver training services must also be provided. Licensing of laboratories and facilities providing radiological services by the appropriate State agency (Departments of Health and Environmental Protection, respectively) is also addressed. The physical facilities which support the laboratory or radiological services need not be located in the rehabilitation hospital.

Proposed N.J.A.C. 8:43H-16, Emergency Services and Procedures, incorporates principles of fire safety and emergency planning. The facility is required by the proposed rules to develop a written emergency plan or various emergency situations, including medical emergencies, equipment breakdown, fire, and other disasters. The provisions contained in the proposed subchapter are intended to promote patient safety.

Requirements for patient rights are stated in proposed N.J.A.C. 8:43H-17. Rehabilitation hospitals are required to develop and implement policies and procedures regarding, for example, the following patient rights: freedom from discrimination or abuse; right to register complaints; and right to privacy and to security of personal possessions.

Proposed N.J.A.C. 8:43H-18 concerns discharge planning services—an important part of the continuum of care in a rehabilitation hospital. Patients and families are to participate in the development of the discharge plan. The intent of the provisions for discharge planning contained in the proposed rules is to promote the preparation of the patient for maximum independent functioning outside the facility.

Requirements for medical records, including provisions for medical record maintenance, storage, contents, and confidentiality, are presented in proposed N.J.A.C. 8:43H-19. The proposed rules stipulate that a medical record shall be maintained for each patient. Proposed N.J.A.C. 8:43H-19.2 requires that the facility employ the services of a medical record practitioner, whose qualifications are specified in proposed N.J.A.C. 8:43H-1.12.

Proposed N.J.A.C. 8:43H-20 includes requirements for an infection prevention and control program. While the rehabilitation hospital is given flexibility in the management of infection control, this subchapter identifies the content areas to be addressed by the facility's infection control policies and procedures.

Housekeeping, sanitation, and safety are the subject of proposed N.J.A.C. 8:43H-21. The rehabilitation hospital is required by the proposed rules to maintain a safe, sanitary environment, managed according to policies and procedures which the facility develops.

The requirement for a quality assurance program is established by proposed N.J.A.C. 8:43H-22. A written plan specifying a timetable and

assignment of responsibility must provide for monitoring of staff and services rendered to patients.

Requirements for construction and physical plant are being developed and it is anticipated that they will be proposed in the New Jersey Register in the near future. N.J.A.C. 8:43H-23 will contain standards for construction and N.J.A.C. 8:43H-24 will contain physical plant requirements for specific services delivered in rehabilitation hospitals.

Social Impact

The Department of Health has the responsibility for protecting and promoting the health of the citizens of New Jersey and establishing rules for the licensure of health care facilities, in accordance with N.J.S.A. 26:2H-1 et seq. and amendments thereto. The proposed chapter N.J.A.C. 8:43H establishes rules for the licensure of rehabilitation hospitals. The purpose of this chapter is to ensure the quality of care provided to patients in rehabilitation hospitals and to protect their health and safety.

People who will be affected by the proposed rules include patients who require comprehensive rehabilitation services due to disease or injury which impairs functioning and who require specialized, integrated care to reach an attainable degree of independence. In a rehabilitation hospital, patient care is rendered by means of a multidisciplinary approach to treatment, requiring the active involvement of professionals, the patient, and family members. The proposed rules seek to prevent fragmentation of services and to promote continuity of care by requiring the various therapeutic modalities to utilize a multidisciplinary approach to patient care.

The proposed rules require patient care evaluation through an organized quality assurance program, which is intended to lead to improved staff performance and patient care. Quality assurance activities are required for each patient care service as well as for facility-wide functions. The provisions for quality assurance are designed to focus the facility's efforts upon delivery of safe and effective patient care.

Both the Department and the rehabilitation hospitals would benefit from having these proposed rules, with their degree of objectivity and measurability, to support the survey, licensure, and enforcement processes. Because of the wide variation in types of patients served, the proposed rules are designed to provide rehabilitation hospitals with the flexibility to establish policies, procedures and means of service delivery which are best, given the facilities' individual structures and patient populations.

Economic Impact

Rehabilitation hospitals are currently providing many of the services covered in the proposed rules. The proposed rules present requirements which reflect many of the current practices already instituted by the facilities. Also, the Departmental licensure and survey mechanisms already in place will continue to function.

Proposed N.J.A.C. 8:43H allows the facilities flexibility in management practices, such as in developing policies and procedures best suited to their individual circumstances and in determining staffing levels to meet patient care needs. This flexibility would allow the facilities to conserve resources by determining the most efficient manner in which to utilize services and personnel. The proposed rules' emphasis upon continuity and coordination of care would reduce duplication and fragmentation of services. Use of a multidisciplinary team approach would foster the efficient utilization of the facility's resources in serving the patient's total rehabilitation needs.

The requirements for a unit dose drug distribution system and an intravenous infusion admixture service should not result in increased cost to facilities, since those presently licensed as special hospitals must already comply with these requirements. Moreover, review of the literature suggests that these rules would increase the cost effectiveness of pharmaceutical services in rehabilitation hospitals.

Discharge planning is another requirement of the proposed rules which should work to control costs. Effective discharge planning, with the participation of various professional disciplines, helps to prevent improper post-discharge placements and facilitates the patient's transition to the least restrictive setting commensurate with the level of care needed. Well-planned post-discharge care may avoid potentially costly fragmentation, gaps, or interruption of services.

The proposed new rules encourage avoidance of unnecessary expenses which result from accidents and injuries by including provisions for infection prevention and control and requirements for effective housekeeping, sanitation, and safety measures. While the primary concern of these rules is the health and safety of patients, they also aim to control costs by focusing upon environmental safety in all areas of the rehabilitation hospital.

The requirements for a quality assurance program, N.J.A.C. 8:43H-22, could be used to increase the cost-effectiveness of facility operations. Evaluation of patient care services, staffing, maintenance of physical plant and equipment, and discharge planning services is required.

Comprehensive rehabilitation services may shorten the time required for recovery, reduce the number of readmissions, and prevent long-term institutionalization of patients, thereby resulting in savings of health care dollars. The proposed rules are intended to assist facilities in providing these services.

Regulatory Flexibility Statement

The Department of Health has determined that compliance with proposed N.J.A.C. 8:43H is necessary for all facilities which provide comprehensive rehabilitation services. Since the proposed new rules are intended to protect the health and safety of patients, the Department recognizes the need to apply the proposed new rules uniformly to all rehabilitation hospitals, regardless of size. It is improbable that any rehabilitation hospital, as defined in the proposed new rules, will have fewer than 100 full-time employees and, therefore, the proposed new rules are not expected to affect small businesses, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Consequently, a regulatory flexibility analysis is not required.

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

8:43B-11.1 General provisions

(a) [These regulations] **This subchapter** shall be applicable to all groups, organizations or individuals seeking a license to operate a special hospital [.] , **excluding rehabilitation hospitals as defined in N.J.A.C. 8:43H.** The general hospital application form of the department shall be utilized to secure basic information from all new applicants.

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

8:43B-11.3 Conditions

(a) Special hospitals, **excluding rehabilitation hospitals as defined in N.J.A.C. 8:43H,** shall conform to applicable administrative, professional, paramedical, ancillary and institutional service requirements set forth in State regulations for general hospitals.

(b)-(m) (No change.)

8:43B-11.4 [Rehabilitation commission] (Reserved)

[Special hospitals for rehabilitation, where primary emphasis is on physical restoration, social adjustment, vocational adjustment and sheltered employment, shall use the standards and accreditation program of the commission on accreditation of rehabilitation facilities as criteria and shall obtain a recommendation from the New Jersey Rehabilitation Commission for classification as a rehabilitation facility.]

Full text of the proposed new rules follows:

CHAPTER 43H MANUAL OF STANDARDS FOR LICENSURE OF REHABILITATION HOSPITALS

SUBCHAPTER 1. DEFINITIONS AND QUALIFICATIONS

8:43H-1.1 Scope

The rules in this chapter pertain to all facilities which provide comprehensive rehabilitation services, including hospitals which provide these services as a separate service. These rules constitute the basis for the licensure of rehabilitation hospitals by the New Jersey State Department of Health.

8:43H-1.2 Purpose

Rehabilitation hospitals provide integrated care to disabled individuals in order to assist these individuals in reaching the functional levels of which they are capable as well as to protect their health and safety. The aim of this chapter is to establish minimum rules to which a rehabilitation hospital must adhere in order to obtain a license to operate in New Jersey.

8:43H-1.3 Definitions

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

"Activities of daily living (ADL)" means the functions or tasks for self-care which are performed either independently or with supervision or assistance. Activities of daily living include at least: mobility, transferring, walking, grooming, bathing, dressing and undressing, eating, and toileting.

"Adult patient" means a patient who is 20 years of age or older.

"Ancillary nursing personnel" means unlicensed workers employed to assist licensed nursing personnel.

"Available" means ready for immediate use (pertaining to equipment) or capable of being reached (pertaining to personnel), unless otherwise defined.

"Bylaws" means a set of rules adopted by the facility for governing its operation. A charter, articles of incorporation, and/or a statement of policies and objectives is an acceptable equivalent.

"Care plan" means a written plan of care for each patient, developed by each health care practitioner participating in the patient's care.

"Cleaning" means the removal by scrubbing and washing, as with hot water, soap or detergent, and vacuuming, of infectious agents and of organic matter from surfaces on which and in which infectious agents may find conditions for surviving or multiplying.

"Clinical note" means a written, signed, and dated notation made by each health care professional who renders a service to the patient.

"Commissioner" means the New Jersey State Commissioner of Health.

"Communicable disease" means an illness due to a specific infectious agent or its toxic products, which occurs through transmission of that agent or its products from a reservoir to a susceptible host.

"Conspicuously posted" means placed at a location within the facility accessible to and seen by patients and the public.

"Contamination" means the presence of an infectious or toxic agent in the air, on a body surface, or on or in clothes, bedding, instruments, dressings, or other inanimate articles or substances, including water, milk, and food.

"Controlled Dangerous Substances Acts" means the Controlled Substances Act of 1970 (Title II, Public Law 91-513) and the New Jersey Controlled Dangerous Substances Act of 1970 (N.J.S.A. 24:21-1 et seq.).

"Current" means up-to-date, extending to the present time.

"Department" means the New Jersey State Department of Health.

"Discharge plan" means a written plan initiated at the time of the patient's admission, which includes at least an evaluation of the patient's needs, the development of goals for discharge, and referrals to community agencies and resources for services following discharge.

"Disinfection" means the killing of infectious agents outside the body, or organisms transmitting such agents, by chemical and physical means, directly applied.

"Documented" means written, signed, and dated.

"Drug" means a substance as defined in the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39. The word "medication" is used interchangeably with the word "drug" in this chapter.

"Drug administration" means a procedure in which a prescribed drug is given to a patient by an authorized person in accordance with all laws and rules governing such procedures.

"Drug dispensing" means a procedure entailing the interpretation of the original or direct copy of the prescriber's order for a drug and pursuant to that order, the proper selection, measuring, labeling packaging, and issuance of the drug to a patient or a service or unit of the facility, in conformance with all applicable Federal, State, and local rules and regulations.

"Environmental modification services" means a process of evaluation and/or adaptation of a patient's living environment as may be needed to permit maximum independent functioning.

"Epidemic" means the occurrence in a facility of one or more cases of an illness in excess of normal expectancy for that illness, and derived from a common or propagated source.

"Family" means person related by blood, marriage, or commitment.

"Full-time" means relating to a time period established by the facility as a full working week, as defined and specified in the facility's policies and procedures.

"Governing authority" means the organization, person, or persons designated to assume legal responsibility for the management, operation, and financial viability of the facility.

"Health care facility" means a facility so defined in N.J.S.A. 26:2H-1 et seq., and amendments thereto.

"Hospital" means a health care facility as defined in N.J.A.C. 8:43B.

"Intravenous infusion admixture service" means the preparation by pharmacy personnel of intravenous infusion solutions requiring compounding and/or reconstitution.

"Job description" means written specifications developed for each position in the facility, containing the qualifications, duties and responsibilities, and accountability required of employees in that position.

"Licensed nursing personnel" (licensed nurse) means registered professional nurses or practical (vocational) nurses licensed by the New Jersey State Board of Nursing.

"Medical record" means all records in the facility which pertain to the patient, including radiological films.

"Monitor" means to observe, watch, or check.

"Multidisciplinary team" means those persons representing different services, who work together to provide an integrated program of care to the patient.

"Nosocomial infection" means an infection acquired by a patient while in the facility.

"Nursing unit" means a continuous area on one floor, which includes rooms for patients.

"Patient treatment plan" means a written plan of patient care which is based upon the patient assessments by the multidisciplinary team and care plans of all services participating in the patient's care.

"Pediatric patient" means a patient who is under 20 years of age.

"Prescriber" means a person who is authorized to write prescriptions in accordance with Federal and State laws.

"Progress note" means a written, signed, and dated notation summarizing information about health care provided and the patient's response to it.

"Rehabilitation hospital" means a facility licensed by the New Jersey State Department of Health to provide comprehensive rehabilitation services to patients for the alleviation or amelioration of the disabling effects of illness. Comprehensive rehabilitation services are characterized by the coordinated delivery of multidisciplinary care intended to achieve the goal of maximizing the self-sufficiency of the patient. A rehabilitation hospital is a facility licensed to provide only comprehensive rehabilitation services or is a distinct unit providing only comprehensive rehabilitation services located in a licensed health care facility.

"Restraint" means a physical device or chemical (drug) used to limit, restrict, or control patient movements.

"Self-administration" means a procedure in which any medication is taken orally, injected, inserted, or topically or otherwise administered by a patient to himself or herself.

"Sexual counseling services" means individual, family and/or group counseling regarding the individual patient and the effect of the specific disability on sexual function.

"Shift" means a time period defined as a full working day by the facility in its policy manual.

"Signature" means at least the first initial and full surname and title (for example, R.N., L.P.N., D.D.S., M.D., D.O.) of a person, legibly written with his or her own hand.

"Staff education plan" means a written plan developed at least annually and implemented throughout the year which describes a coordinated program for staff education for each service, including inservice programs and on-the-job training.

"Staff orientation plan" means a written plan for the orientation of each new employee to the duties and responsibilities of the service to which he or she has been assigned, as well as to the personnel policies of the facility.

"Sterilization" means a process of destroying all microorganisms, including those bearing spores, in, on, and around an object.

"Supervision" means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within

his or her sphere of competence, with initial direction and periodic on-site inspection of the actual act of accomplishing the function or activity.

1. "Direct supervision" means supervision on the premises within view of the supervisor.

"Unit dose drug distribution system" means a system in which drugs are delivered to patient areas in single unit packaging. Each patient has his or her own receptacle, such as a tray, bin, box, cassette, drawer, or compartment, labeled with his or her first and last name and room number, and containing his or her own medications. Each medication is individually wrapped and labeled with the generic name, trade name (if appropriate), and strength of the drug, lot number or reference code, expiration date, and manufacturer's or distributor's name, and ready for administration to the patient.

8:43H-1.4 Qualifications of the administrator of the rehabilitation hospital

The administrator shall have a baccalaureate degree in administration or in a health care discipline and four years of administrative or supervisory experience in a health care facility.

8:43H-1.5 Qualifications of audiologists

Each audiologist shall be so licensed by the Audiology and Speech-Language Pathology Advisory Committee of the Division of Consumer Affairs of the New Jersey State Department of Law and Public Safety.

8:43H-1.6 Qualifications of dentists

Each dentist shall be so licensed by the New Jersey State Board of Dentistry.

8:43H-1.7 Qualifications of dietitians

Each dietitian shall be registered or eligible for registration by the Commission on Dietetic Registration.

8:43H-1.8 Qualifications of the director of nursing services

The director of nursing services shall be a registered professional nurse who has completed a baccalaureate degree program accredited by the National League for Nursing and shall have at least two years of full-time, or full-time equivalent, experience in nursing supervision and/or nursing administration in a health care facility.

8:43H-1.9 Qualifications of food service supervisors

(a) Each food service supervisor shall:

1. Be a dietitian; or
2. Be a graduate of a dietetic technician or dietetic assistant training program approved by the American Dietetic Association; or
3. Be a graduate of a course, approved by the New Jersey State Department of Education, providing 90 or more hours of classroom instruction in food service supervision, and have one year of full-time, or full-time equivalent, experience as a food service supervisor in a health care facility, with consultation from a dietitian; or
4. Have training and experience in food service supervision and management in a military service equivalent to the programs listed in (a)2 or 3 above.

8:43H-1.10 Qualifications of licensed practical nurses

Each licensed practical nurse shall be so licensed by the New Jersey State Board of Nursing.

8:43H-1.11 Qualifications of the medical director

The medical director shall be a physiatrist who is certified by the American Board of Physical Medicine and Rehabilitation, Inc., or the American Osteopathic Board of Rehabilitation Medicine. If the facility provides services to pediatric patients only, the medical director may be a pediatrician who is certified by the American Board of Pediatrics, Inc., or the American Osteopathic Board of Pediatrics.

8:43H-1.12 Qualifications of medical record practitioners

(a) Each medical record practitioner shall:

1. Be eligible for certification as a registered record administrator (RRA) or an accredited record technician (ART) by the American Medical Record Association; or

2. Be a graduate of a program in medical record science accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association in collaboration with the Council on Education of the American Medical Record Association.

8:43H-1.13 Qualifications of occupational therapists

Each occupational therapist shall be certified or eligible for certification as an occupational therapist, registered (OTR) by the American Occupational Therapy Association.

8:43H-1.14 Qualifications of pediatricians

Each pediatrician shall be a physician who is certified or eligible for certification by the American Board of Pediatrics, Inc., or the American Osteopathic Board of Pediatrics.

8:43H-1.15 Qualifications of pharmacists

Each pharmacist shall be so registered by the New Jersey State Board of Pharmacy.

8:43H-1.16 Qualifications of physiatrists

Each physiatrist shall be a physician who is certified or eligible for certification by the American Board of Physical Medicine and Rehabilitation, Inc., or the American Osteopathic Board of Rehabilitation Medicine.

8:43H-1.17 Qualifications of physical therapists

Each physical therapist shall be so licensed by the New Jersey State Board of Physical Therapy Examiners.

8:43H-1.18 Qualifications of physicians

Each physician shall be licensed or authorized by the New Jersey State Board of Medical Examiners to practice medicine in the State of New Jersey.

8:43H-1.19 Qualifications of psychologists

Each psychologist shall be so licensed by the New Jersey Board of Psychological Examiners.

8:43H-1.20 Qualifications of recreational therapists

(a) Each recreational therapist shall:

1. Have a bachelor's degree from an accredited college with a major in recreation or therapeutic recreation; or
2. Have a bachelor's degree with a major in psychology, sociology, physical education, music, dance or drama including 18 semester hours of recreation or therapeutic recreation course content, and five years of full-time, or full-time equivalent, experience in therapeutic recreation.

8:43H-1.21 Qualifications of registered professional nurses

Each registered professional nurse shall be so licensed by the New Jersey State Board of Nursing.

8:43H-1.22 Qualifications of respiratory therapists

Each respiratory therapist shall be certified or eligible for certification by the National Board for Respiratory Care.

8:43H-1.23 Qualifications of social workers

(a) Each social worker shall:

1. Have a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education; or
2. Have a baccalaureate degree in social work from a social work program accredited by the Council on Social Work Education.

8:43H-1.24 Qualifications of speech-language pathologists

Each speech-language pathologist shall be so licensed by the Audiology and Speech-Language Pathology Advisory Committee of the Division of Consumer Affairs of the New Jersey State Department of Law and Public Safety.

SUBCHAPTER 2. LICENSURE PROCEDURES

8:43H-2.1 Certificate of Need

(a) According to N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility shall not be instituted, constructed, expanded, or licensed to operate except upon application for and receipt of a Certificate of Need issued by the Commissioner.

(b) Application forms for a Certificate of Need and instructions for completion may be obtained from:

Certificate of Need Program
Division of Health Planning and Resources Department
New Jersey State Department of Health
CN 360
Trenton, N.J. 08625

(c) The facility shall implement all conditions imposed by the Commissioner as specified in the Certificate of Need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with N.J.S.A. 26:2H-1 et seq., and amendments thereto.

8:43H-2.2 Application for licensure

(a) Following receipt of a Certificate of Need as a rehabilitation hospital, any person, organization, or corporation desiring to operate a rehabilitation hospital shall make application to the Commissioner for a license on forms prescribed by the Department. Such forms may be obtained from:

Director
Licensing, Certification and Standards
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, N.J. 08625

(b) The Department shall charge a nonrefundable fee of \$500.00 for the filing of an application for licensure as a rehabilitation hospital and \$500.00 for the annual renewal of the license. If comprehensive rehabilitation services are offered by a licensed health care facility as a separate service, the health care facility shall be charged \$150.00 for the filing of an application for licensure of the service and \$150.00 for the annual renewal.

(c) Each applicant for a license to operate a facility shall make an appointment for a preliminary conference at the Department with the Licensing, Certification and Standards Program.

8:43H-2.3 Newly constructed or expanded facilities

(a) The application for license for a newly constructed or expanded facility shall include written approval of final construction of the physical plant by:

Health Facilities Construction Services
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, N.J. 08625

(b) An on-site inspection of the construction of the physical plant shall be made by representatives of the Health Facilities Construction Services to verify that the building has been constructed in accordance with the architectural plans approved by the Department.

(c) Any rehabilitation hospital with a construction program, whether a Certificate of Need is required or not, shall submit plans to the Health Facilities Construction Services of the Department for review and approval prior to the initiation of construction.

8:43H-2.4 Surveys and temporary license

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the facility by representatives of the Health Facilities Inspection Program of the Department shall be conducted to determine if the facility adheres to the rules in this chapter.

1. The facility shall be notified in writing of the findings of the survey, including any deficiencies found.

2. The facility shall notify the Health Facilities Inspection Program of the Department when the deficiencies, if any, have been corrected, and the Health Facilities Inspection Program will schedule one or more resurveys of the facility prior to occupancy.

(b) A temporary license may be issued to a facility when the following conditions are met:

1. A preliminary conference (see N.J.A.C. 8:43H-2.2(c)) for review of the conditions for licensure and operation has taken place between the Licensing, Certification and Standards Program and representatives of the facility, who will be advised that the purpose of the

temporary license is to allow the Department to determine the facility's compliance with N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules pursuant thereto;

2. Written approvals are on file with the Department from the local zoning, fire, health, and building authorities;

3. Written approvals of the water supply and sewage disposal system from local officials are on file with the Department for any water supply or sewage disposal system not connected to an approved municipal system;

4. Survey(s) by representatives of the Department indicate the facility adheres to the rules in this chapter; and

5. Professional personnel are employed in accordance with the staffing requirements in this chapter.

(c) No facility shall admit patients to the facility until the facility has the written approval and/or license issued by the Licensing, Certification and Standards Program of the Department.

(d) Survey visits may be made to a facility at any time by authorized staff of the Department. Such visits may include, but not be limited to, the review of all facility documents and patient records and conferences with patients.

(e) A temporary license may be issued to a facility for a period of six months and may be renewed as determined by the Department.

(f) The temporary license shall be conspicuously posted in the facility.

(g) The temporary license is not assignable or transferable and shall be immediately void if the facility ceases to operate or if its ownership changes.

8:43H-2.5 Full license

(a) A full license shall be issued on expiration of the temporary license, if surveys by the Department have determined that the facility is operated as required by N.J.S.A. 26:2H-1 et seq., and amendments thereto, and by the rules pursuant thereto.

(b) A license shall be granted for a period of one year or less as determined by the Department.

(c) The license shall be conspicuously posted in the facility.

(d) The license is not assignable or transferable, and it shall be immediately void if the facility ceases to operate or if its ownership changes.

(e) The license, unless suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the original licensure date. The facility will receive a request for renewal fee 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department.

(f) The license may not be renewed if local rules, regulations and/or requirements are not met.

8:43H-2.6 Surrender of license

The facility shall notify each patient, the patient's physician, and any guarantors of payment at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of license. In such cases, the license shall be returned to the Licensing, Certification and Standards Program of the Department within seven working days after the voluntary surrender, revocation, non-renewal, or suspension of license.

8:43H-2.7 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules in this chapter, waive sections of these rules if, in his or her opinion, such waiver would not endanger the life, safety, or health of patients or the public.

(b) A facility seeking a waiver of these rules shall apply in writing to the Director of the Licensing, Certification and Standards Program of the Department.

(c) A written request for waiver shall include the following:

1. The specific rule(s) or part(s) of the rule(s) for which waiver is requested;

2. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon adherence;

3. An alternative proposal which would ensure patient safety; and
4. Documentation to support the request for waiver.

(d) The Department reserves the right to request additional information before processing a request for waiver.

8:43H-2.8 Action against a license

(a) If the Department determines that operational or safety deficiencies exist, it may require that all new admissions to the facility cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(b) The Commissioner may order the immediate removal of patients from a facility whenever he or she determines imminent danger to any person's health or safety.

(c) The provisions of this section shall apply to facilities with a temporary license and facilities with a full license.

8:43H-2.9 Hearings

(a) If the Department proposes to suspend, revoke, deny, or refuse to renew a license, the licensee or applicant may request a hearing which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) Prior to transmittal of any hearing request to the Office of Administrative Law, the Department may schedule a conference to attempt to settle the matter.

SUBCHAPTER 3. GENERAL REQUIREMENTS

8:43H-3.1 Services provided

(a) The facility shall provide preventive, diagnostic, therapeutic, and rehabilitative services to patients in accordance with the rules in this chapter.

(b) The facility shall provide, at a minimum, audiology, dental, dietary, driver evaluation, environmental modification, laboratory, medical, nursing, nutritional counseling, occupational therapy, orthotic and prosthetic, pharmaceutical, physiatry, physical therapy, psychological, radiological, recreational therapy, respiratory therapy, sexual counseling, social work, speech-language pathology, and vocational testing services directly in the facility.

(c) Driver training services shall be provided.

(d) Audiology, dental, driver evaluation, driver training, environmental modification, laboratory, medical, nursing, nutritional counseling, occupational therapy, orthotic and prosthetic, pharmaceutical, physiatry, physical therapy, psychological, radiological, recreational therapy, respiratory therapy, sexual counseling, social work, speech-language pathology, and vocational testing services shall be provided on an inpatient basis and on an outpatient basis.

(e) If a health care facility licensed by the Department provides comprehensive rehabilitation services in addition to other health care services, the facility shall adhere to the rules in this chapter and to the rules for licensure of facilities providing the other health care services.

(f) The facility shall adhere to applicable Federal, State, and local laws, rules, regulations, and requirements.

(g) The facility shall provide a minimum of three hours of services per patient per day, which shall include physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and/or audiology services, as specified in N.J.A.C. 8:43H-12.1(b) and (c).

8:43H-3.2 Ownership

(a) The ownership of the facility and the property on which it is located shall be disclosed to the Department. Proof of this ownership shall be available in the facility. Any proposed change in ownership shall be reported to the Director of the Licensing, Certification and Standards Program of the Department in writing at least 30 days prior to the change and in conformance with requirements for Certificate of Need applications.

(b) No facility shall be owned or operated by any person convicted of a crime relating adversely to the person's capability of owning or operating the facility.

8:43H-3.3 Submission and availability of documents

(a) The facility shall, upon request, submit in writing any documents which are required by the rules in this chapter to the Director of the Licensing, Certification and Standards Program of the Department.

8:43H-3.4 Personnel

(a) The facility shall develop written job descriptions and ensure that personnel are assigned duties based upon their education, training, and competencies, and in accordance with their job descriptions.

(b) All personnel who require licensure, certification, or authorization to provide patient care shall be licensed, certified, or authorized under the appropriate laws or rules of the State of New Jersey.

(c) The facility shall maintain written staffing schedules. Provision shall be made for substitute staff with equivalent qualifications to replace absent staff members. Staffing schedules shall be implemented to ensure continuity of care and the provision of services consistent with the rehabilitation goals specified in the patient treatment plan.

(d) The facility shall develop and implement a staff orientation and a staff education plan, including plans for each service and designation of person(s) responsible for training.

1. All personnel shall receive orientation at the time of employment and continuing in-service education regarding emergency plans and procedures, and the infection prevention and control services.

(e) At least one person trained in cardiopulmonary resuscitation in an approved course, as defined in the facility's policy and procedure manual, shall be in all patient areas when patients are present.

8:43H-3.5 Policy and procedure manual

(a) A policy and procedure manual(s) for the organization and operation of the facility shall be developed, implemented, and reviewed at intervals specified in the manual(s). Each review of the manual(s) shall be documented, and the manual(s) shall be available in the facility to representatives of the Department at all times. The manual(s) shall include at least the following:

1. A written statement of the program's philosophy and objectives, and the services provided by the facility;

2. An organizational chart delineating the lines of authority, responsibility, and accountability for the administration and patient care services of the facility.

3. A description of the quality assurance program for patient care and staff performance;

4. Specification of business hours and visiting hours;

5. Policies and procedures for reporting all diagnosed and/or suspected cases of child abuse and/or neglect in compliance with N.J.S.A. 9:6-1 et seq.,¹ including, but not limited to, the following:

i. The designation of a staff member(s) to be responsible for coordinating the report of diagnosed and/or suspected cases of child abuse and/or neglect, recording the notification to the Division of Youth and Family Services on the medical record, and serving as a liaison between the facility and the Division of the Youth and Family Services;

ii. The development of written protocols for the identification and treatment of abused and/or neglected children; and

iii. The provision of education and/or training programs to appropriate persons regarding the identification and reporting of diagnosed and/or suspected cases of child abuse and/or neglect and regarding the facility's policies and procedures on at least an annual basis;

6. Policies and procedures for the maintenance of confidential personnel records for each employee, including, at a minimum, the employee's name, previous employment, educational background, credentials, license number with effective date and date of expiration (if applicable), certification (if applicable), verification of credentials, records of physical examinations, job description, and evaluations of job performance; and

7. Policies and procedures, including content and frequency, for physical examinations upon employment and subsequently for employees and persons providing direct patient care services through

contractual arrangements or written agreements. Such policies and procedures shall ensure that;

i. Each employee who cannot document the result of a previous rubella screening test shall be given a rubella screening test using the rubella hemagglutination inhibition test or other rubella screening test approved by the Department. Each new employee who cannot document the result of a previous rubella screening test shall be given the rubella screening test upon employment. An employee who can document seropositivity from a previous rubella screening test or who can document inoculation with rubella vaccine shall not be required to have a rubella screening test;

(1) Each employee tested shall be informed in writing by the facility of the results of his or her rubella screening test;

(2) Each employee's personnel record shall contain documentation of all tests performed and the results; and

(3) A list shall be maintained of all employees who are seronegative and unvaccinated, to be used in the event that an employee is exposed to rubella and a determination is needed as to whether or not the employee may continue to work.

(b) The policy and procedure manual(s) shall be available and accessible to all patients, staff, and the public.

¹Copies of the law can be obtained from the local district office of the Division of Youth and Family Services (DYFS) or from the Office of Program Support, Division of Youth and Family Services, New Jersey State Department of Human Services, CN 717, Trenton, New Jersey 08625.

8:43H-3.6 Patient transportation

The facility shall develop and implement methods of patient transportation for services provided outside the facility, including emergency services, which includes plans for security and accountability for the patient and his or her personal possessions.

8:43H-3.7 Written agreements

The facility shall have a written agreement, or its equivalent, for services not provided directly by the facility. The written agreement, or its equivalent, shall specify that the facility retain administrative responsibility for services rendered, and require that services be provided in accordance with the rules in this chapter.

8:43H-3.8 Reportable events

(a) The facility shall notify the Department immediately by telephone (609-292-4304), followed within 72 hours by written confirmation, of the following:

1. Interruption or cessation of services listed in the rules in this chapter;

2. Termination of employment of the administrator, and the name and qualifications of the administrator's replacement;

3. Occurrence of epidemic disease in the facility;

4. All fires, all disasters, and all deaths resulting from accidents or incidents in the facility or related to facility services. The written confirmation shall contain information about injuries to patients and/or personnel, disruption of services, and extent of damages; and

5. All alleged or suspected crimes committed by or against patients, which shall also be reported at the time of occurrence to the local police department in accordance with Federal laws regarding confidentiality.

8:43H-3.9 Notices

(a) The facility shall conspicuously post a notice that the following information is available in the facility between 8:00 A.M. and 8:00 P.M. daily to patients and the public:

1. All waivers granted by the Department;

2. A list of deficiencies from the last annual licensure inspection and certification survey report (if applicable), and the list of deficiencies from any valid complaint investigation during the past 12 months;

3. Policies and procedures regarding patient rights;

4. Visiting hours (including at least the time between the hours of 8:00 A.M. and 8:00 P.M. daily) and business hours of the facility, including the policies of the facility regarding limitations and activities during these times; and

5. The names and addresses of the members of the governing authority.

8:43H-3.10 Information reportable to State Board of Medical Examiners

(a) In compliance with N.J.S.A. 26:2H-12.2; the facility shall establish and implement written policies and procedures for reporting information to the New Jersey State Board of Medical Examiners in writing on forms provided by the Department, within 30 days of the proceeding or action, request, settlement, judgment or award. (Submit forms to the New Jersey State Board of Medical Examiners, 28 West State Street, Trenton, New Jersey 08608. Questions may be directed to the Board office at (609) 292-4843.) The information to be reported shall include, but not be limited to, the following:

1. A disciplinary proceeding or action taken by the governing body against any physician or surgeon licensed by the Board when the proceeding or action results in a physician's or surgeon's reduction or suspension of privileges or removal or resignation from the medical staff, including:

i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was the subject of governing authority action which resulted in the reduction or suspension of privileges, or the removal or resignation of the physician or surgeon from the medical staff;

ii. Nature and grounds of proceedings;

iii. Date(s) of precipitating event(s) and of official action taken;

iv. Name, title, and telephone number of facility official(s) having knowledge of existence and location of pertinent records or persons familiar with the matter;

v. Pendency of any appeal; and

vi. Other information relating to the proceeding or action as may be requested by the Board; and

2. A medical malpractice liability insurance claim settlement, judgment or arbitration award in which the facility is involved, including:

i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was involved in the medical malpractice liability insurance claim settlement, judgment or arbitration award;

ii. Nature and grounds of proceedings;

iii. Date(s) of precipitating event(s), and of official action taken;

iv. Name, title, and telephone number of facility official(s) having knowledge of the existence and location of pertinent records or persons familiar with the matter;

v. A copy of the complaint, response, and settlement order, judgment, or award; and

vi. Other information relating to the settlement, judgment, or arbitration award as may be required by the Board.

8:43H-3.11 Maintenance of records

(a) The following records shall be maintained by the facility:

1. A chronological listing of patients admitted and discharged, including the destination of patients who are discharged; and

2. Statistical data as required by the Department.

8:43H-3.12 Financial reports

(a) Upon development of a uniform cost reporting system approved by the Health Care Administration Board, the facility shall adopt and maintain the uniform system of cost reporting from which reports will be prepared to meet the requirements of the Commissioner as stated in N.J.S.A. 26:2H-1 et seq., and amendments thereto.

(b) An annual financial report shall be submitted to the Department and shall include a statement of income and expenditure by unit of service.

SUBCHAPTER 4. GOVERNING AUTHORITY

8:43H-4.1 Responsibility of the governing authority

(a) The facility shall have a governing authority which shall assume legal responsibility for the management, operation, and financial viability of the facility. The governing authority shall be responsible for, but not limited to, the following:

1. Services provided and the quality of care rendered to patients;

2. Provision of a safe physical plant equipped and staffed to maintain the facility and services;

3. Adoption and documented review of written bylaws, or their equivalent, according to a schedule established by the governing authority;

4. Appointment, reappointment, assignment of privileges, and curtailment of privileges of health care professionals, and written confirmation of such actions;

5. Development and documented review of all policies and procedures, according to a schedule established by the governing authority;

6. Establishment and implementation of a system whereby patient and staff grievances and/or recommendations, including those relating to patient rights, can be identified within the facility. This system shall include a feedback mechanism through management to the governing authority, indicating what action was taken;

7. Determination of the frequency of meetings of the governing authority and its committees, or their equivalents, conducting such meetings, and documenting them through minutes;

8. Delineation of the duties of the officers of any committees, or their equivalent, of the governing authority. When the governing authority establishes committees or their equivalents, their purpose, structure, responsibilities, and authority, and the relationship of the committee or its equivalent to other entities within the facility shall be documented;

9. Establishment of the qualifications of members and officers of the governing authority, the procedures for electing and appointing officers, and the terms of service for members, officers, and committee chairpersons or their equivalents; and

10. Approval of the medical staff bylaws or their equivalent.

SUBCHAPTER 5. ADMINISTRATION

8:43H-5.1 Appointment of administrator

The governing authority shall appoint a full-time administrator who shall be available on the premises of the facility at all times. An alternate shall be designated in writing to act in the absence of the administrator.

8:43H-5.2 Administrator's responsibilities

(a) The administrator shall be responsible for, but not limited to, the following:

1. Ensuring the development, implementation, and enforcement of all policies and procedures, including patient rights;

2. Planning for, and the administration of, the managerial, operational, fiscal, and reporting components of the facility;

3. Participating in the quality assurance program for patient care and staff performance;

4. Ensuring that all personnel are assigned duties based upon their education, training, competencies, and job descriptions;

5. Ensuring the provision of staff orientation and staff education; and

6. Establishing and maintaining liaison relationships, communication, and integration with facility staff and services and with patients and their families.

SUBCHAPTER 6. PATIENT CARE POLICIES

8:43H-6.1 Policies and procedures

(a) Written patient care policies and procedures shall be established, implemented, and reviewed at intervals specified in the policies and procedures. Each review of the policies and procedures shall be documented. Policies and procedures shall include, but not be limited to, policies and procedures for the following:

1. Patient rights;

2. The determination of staffing levels on the basis of patient need;

3. The referral of patients to other health care providers and medical consultative services. Medical consultative services shall include, at a minimum, the following: surgery, internal medicine, neurology, neurosurgery, ophthalmology, orthopedic surgery, otorhinolaryngology, pediatrics, plastic surgery, psychiatry, pulmonary medicine, and urology;

4. The provision of sexual counseling services directly in the facility, in accordance with the patient treatment plan;

5. The provision of environmental modification services in the patient's living environment, in accordance with the patient treatment plan;

6. Emergency care of patients, in accordance with the rules in this chapter; care of patients during an episode of communicable disease; and care of patients with tuberculosis which is not communicable following initiation of chemotherapy, or is nonpulmonary and therefore not transmissible;

7. Obtaining written informed consent;

8. Patient instruction and health education, including the provision of printed and/or written instructions and information for patients, with multilingual instructions as indicated;

9. Admission of patients;

10. An interview with the patient and his or her family, conducted by the administrator or his or her designee, prior to or at the time of the patient's admission. The interview shall include, at a minimum, orientation of the patient to the facility's policies, business hours, fee schedule, services provided, patient rights, and criteria for admission, treatment, and discharge. A summary of the interview shall be documented in the patient's medical record;

11. Restrictions to the admission and retention of patients, to ensure that:

i. A patient who manifests such a degree of behavioral disorder that he or she is a danger to himself or herself or others, or whose behavior interferes with the health or safety of other patients, shall not be admitted or retained;

ii. A patient suffering from substance abuse or misuse only shall not be admitted to or retained in the facility; and

iii. If an applicant, after applying in writing, is denied admission to the facility, the applicant and/or his or her family shall be given the reason for such denial in writing, signed by the administrator, within 15 days;

12. Verbal and telephone orders, to ensure that they are written into the patient's medical record by the person accepting them and countersigned by the prescriber within 24 hours. Verbal and telephone orders shall be limited to emergency situations, as defined in the facility's policies and procedures;

13. Financial arrangements, to ensure that the facility:

i. Informs patients of the fees for services (where a fee is charged);

ii. Maintains a written record of all financial arrangements with the patient and/or his or her family, with copies furnished to the patient;

iii. Assesses no additional charges, expenses, or other financial liabilities in excess of the daily, weekly, or monthly rate included in the admission agreement, except:

(1) Upon written approval and authority of the patient and/or his or her family, who shall be given a copy of the written approval;

(2) Upon written orders of the patient's physician, stipulating specific services and supplies not included in the admission agreement;

(3) Upon 15 days' prior written notice to the patient and/or his or her family of additional charges, expenses, or other financial liabilities due to the increased cost of maintenance and/or operation of the facility; or

(4) In the event of a health emergency involving the patient and requiring immediate, special services or supplies to be furnished during the period of the emergency;

iv. Describes for the patient agreements with third-party payors and/or other payors and referral systems for patients' financial assistance; and

v. Describes sliding fee scales and any special payment plans established by the facility;

14. Interpretation services, if the patient population is non-English-speaking or for patients who are blind or deaf;

15. The control of smoking in the facility in accordance with N.J.S.A. 26:3D-1 et seq. and 26:3D-7 et seq.;

16. Notification of the patient's family in the event that the patient sustains an injury, or an accident or incident occurs, immediately after the occurrence. Immediately following such notification, the notification shall be documented in the patient's medical record;

17. The use of restraints, including, as a minimum:

i. Specification of the uses of restraints and types of restraints permitted, specification of the frequency with which a patient placed in restraint shall be monitored and of the personnel responsible for monitoring the patient, and specification of the required documentation;

ii. Prohibition of the use of locked restraints and confinement of a patient in a locked or barricaded room, and prohibition of the use of restraints for punishment or for the convenience of facility personnel;

iii. Specification that restraints be used so as not to cause physical injury or discomfort to the patient and only when authorized for a specified period of time. Opportunity for motion and exercise shall be provided for a period of not less than 10 minutes during each one-hour period in which a physical restraint is employed, to ensure opportunity for elimination of body wastes, good body alignment, circulation, and change of position; and

iv. A requirement that a physical restraint be used only when authorized in writing by a physician except when necessitated by an emergency, in which case it shall be approved by the medical director, or the director of nursing services or his or her designee;

18. Discharge, transfer and readmission of patients, including criteria for each:

i. Written notification by the administrator shall be provided to a patient of a decision to involuntarily discharge him or her from the facility. The notice shall include the reason for discharge and the patient's right to appeal. A copy of the notice shall be entered in the patient's medical record;

ii. The patient shall have the right to appeal to the administrator any involuntary discharge from the facility. The appeal shall be in writing and a copy shall be included in the patient's medical record with the disposition or resolution of the appeal;

19. The care and control of pets if the facility permits pets in the facility or on its premises;

20. The calibration of instruments of measurement, including the frequency of calibration; and

21. Care of deceased patients, including, but not limited to, the following:

i. Pronouncement of death. The patient's family shall be notified at the time of death. The deceased shall not be discharged from the facility until pronounced dead and the death documented in the patient's medical record;

ii. Removal of the deceased from rooms occupied by other patients; and

iii. Transportation of the deceased in the facility, and removal from the facility, in a dignified manner.

SUBCHAPTER 7. PATIENT ASSESSMENTS, CARE PLANS, AND TREATMENT PLAN

8:43H-7.1 Patient treatment plans

(a) Each patient shall have a written patient treatment plan, developed under the direction of a physician, which is based upon assessments of his or her needs by the multidisciplinary team.

1. The physician responsible for providing care to the patient shall document in the patient's medical record an admission and medical history and a report of physical examination within 24 hours of admission, the plan of care, and progress notes and shall participate as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan.

2. A written plan of care shall be developed by the health care practitioners participating in the patient's care. The care plan shall include, but not be limited to: care to be provided based upon the patient assessment, an evaluation of the patient's potential for improving his or her functional level, goals consistent with the patient's potential for rehabilitation, and the patient's discharge plan. If the patient does not need a service, a care plan is not needed for that service.

3. The patient treatment plan shall be developed from the assessments by the multidisciplinary team and initiated upon the patient's admission. The patient treatment plan shall include, but not be limited to, the following:

- i. Orders for treatment or services, medications, and diet;
- ii. The patient's rehabilitation goals for himself or herself;
- iii. The specific rehabilitation goals of treatment or services;
- iv. The time intervals, which shall not exceed 14 days; at which the patient's response to treatment or services will be reviewed;
- v. Anticipated time frame(s) for the accomplishment of the rehabilitation goals;
- vi. The measures to be used to assess the effects of treatment or services.

(b) The patient and, if indicated, family members shall participate in the development of the patient treatment plan including the discharge plan. Participation shall be documented in the patient's medical record.

1. If, in the opinion of a physician, the patient's participation in the development of the patient treatment plan is medically contraindicated, as documented in the patient's medical record, a designated member of the multidisciplinary team shall review the treatment plan with the patient prior to implementation, and the family shall be informed of the treatment plan.

8:43H-7.2 Implementation of plans

(a) Each health care practitioner participating in the patient's care shall provide services in accordance with the care plan and patient treatment plan.

(b) Each health care practitioner providing services to the patient shall establish criteria to measure the effectiveness and outcome of services provided and shall assess and reassess the patient to determine if services provided meet the established criteria. Assessment and reassessment shall be documented in the patient medical record.

(c) Each health care practitioner providing services to the patient shall participate as a member of the multidisciplinary team in developing, implementing, reviewing and revising the patient treatment plan.

1. The multidisciplinary team shall review and revise the patient treatment plan based upon the patient's response to the care provided by each of the participating services. Documentation in the patient's medical record shall indicate review and revision of the patient treatment plan.

SUBCHAPTER 8. MEDICAL SERVICES

8:43H-8.1 Provision of medical services

Medical services shall be provided to all patients 24 hours a day, seven days a week, directly in the facility.

8:43H-8.2 Appointment of medical director

A full-time medical director shall be appointed. Comprehensive rehabilitation services shall be provided under the direction of the medical director. The medical director shall designate in writing a physician to act in his or her absence.

8:43H-8.3 Medical director's responsibilities

(a) The medical director shall be responsible for the direction, provision, and quality of medical services provided to patients. He or she shall be responsible for, but not limited to, the following:

1. Developing and maintaining written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the medical service;
2. Participating in planning and budgeting for the medical service;
3. Coordinating and integrating the medical service with other patient care services to provide a continuum of care for the patient;
4. Assisting in developing and maintaining written job descriptions for the medical staff, and assigning duties based upon education, training, competencies, and job descriptions; and
5. Developing, implementing, and reviewing written medical policies, including medical staff bylaws or their equivalent, in cooperation with the medical staff, including, but not limited to, the following:

- i. A plan for medical staff meetings and their documentation through minutes;
- ii. A mechanism for establishing and implementing procedures relating to credentials review, delineation of qualifications, medical staff appointments and reappointments, evaluation of medical care,

and the granting, denial, curtailment, suspension, or revocation of medical staff privileges; and

iii. A system for completion of entries in the patient medical record by members of the medical staff. Entries shall be signed by a physician in accordance with the facility's policies and procedures.

8:43H-8.4 Responsibilities of physicians

The physician responsible for providing care to the patient shall document in the patient's medical record an admission and medical history and a report of physical examination within 24 hours of admission, the care plan, and progress notes and shall participate as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan.

8:43H-8.5 Availability of pediatrician

If the facility provides care for pediatric patients, a pediatrician shall be available.

8:43H-8.6 Availability of physiatrist

If the medical director of a facility providing services to pediatric patients is a pediatrician, a full-time physiatrist shall be available.

SUBCHAPTER 9. NURSING SERVICES

8:43H-9.1 Provision of nursing services

(a) The facility shall provide nursing services to patients 24 hours a day, seven days a week, directly in the facility.

(b) At least one registered professional nurse and one licensed nurse, excluding the director of nursing services or his or her designee, shall be assigned to each nursing unit 24 hours a day, seven days a week. Additional licensed nursing personnel and ancillary nursing personnel shall be provided in accordance with the facility's patient care policies and procedures for determining staffing levels on the basis of acuity of patient need.

(c) A registered professional nurse who has completed a baccalaureate degree program accredited by the National League for Nursing and who is certified by the Association of Rehabilitation Nurses shall provide staff orientation and staff education to nursing personnel.

8:43H-9.2 Appointment of director of nursing services

A registered professional nurse shall be appointed in writing as the director of nursing services and shall be on duty at all times. A registered professional nurse shall be designated in writing to act in the director's absence.

8:43H-9.3 Responsibilities of director of nursing services

(a) The director of nursing services shall be responsible for the direction, provision, and quality of nursing service provided to patients. He or she shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, philosophy, policies, a procedure manual, an organizational plan, and a quality assurance program for the nursing service;
2. Participating in planning and budgeting for the nursing service;
3. Coordinating and integrating the nursing service with other patient care services to provide a continuum of care for the patient;
4. Assisting in developing and maintaining written job descriptions for nursing and ancillary nursing personnel, and assigning duties based upon education, training, competencies, and job descriptions;
5. Ensuring that nursing services are provided to the patient as specified in the nursing care plan, which shall be initiated upon the patient's admission, and that nursing personnel are assigned to patients in accordance with the facility's patient care policies and procedures for determining staffing levels on the basis of acuity of patient need; and
6. Providing for a planned orientation program in rehabilitation nursing concepts.

8:43H-9.4 Responsibilities of licensed nursing personnel

(a) In accordance with the State of New Jersey Nursing Practice Act, N.J.S.A. 45:11-23 et seq., as interpreted by the New Jersey State Board of Nursing, and written job descriptions, licensed nursing personnel shall be responsible for providing nursing care, including, but not limited to, the following:

1. Care of patients through health promotion, maintenance, and restoration;
2. Care toward prevention of infection, accident, and injury;
3. Assessing the nursing care needs of the patient, preparing the nursing care plan based upon the assessment, providing nursing care services as specified in the nursing care plan, reassessing the patient's response to services provided, and revising the nursing care plan. The initial assessment shall be performed by a registered professional nurse. Each of these activities shall be documented in the patient's medical record;
4. Teaching, supervising, and counseling the patient, family and staff regarding nursing care and the patient's needs. Only a registered professional nurse shall initiate these functions, which may be reinforced by licensed nursing personnel;
5. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan;
6. Writing clinical notes and progress notes; and
7. Assisting the patient in activities of daily living based upon the patient's abilities, disabilities, and rehabilitation goals.

8:43H-9.5 Nursing care services related to pharmaceutical services
 (a) Nursing personnel shall be responsible for, but not limited to, ensuring the following:

1. All drugs administered are prescribed in writing and the order signed and dated by the prescriber. Drugs shall be administered in accordance with all Federal and State laws and rules by the following licensed or authorized nursing personnel:
 - i. Registered professional nurses;
 - ii. Licensed practical nurses who are trained in drug administration in programs approved by the New Jersey State Board of Nursing;
 - iii. Nurses with a valid temporary work permit issued by the New Jersey State Board of Nursing; and
 - iv. Student nurses in a school of nursing approved by the New Jersey State Board of Nursing, under the supervision of a nurse faculty member;
2. Drugs are not prepped. Drugs shall be administered promptly after the dose has been prepared, and by the individual who prepared the dose, except when a unit dose drug distribution system is used;
3. The patient is identified prior to drug administration. Drugs prescribed for one patient shall not be administered to another patient;
4. A record of drugs administered is maintained. After each drug administration, the following shall be documented by the nurse who administered the drug: name and strength of the drug, date and time of administration, dosage administered, method of administration, and signature of the nurse who administered the drug;
5. All drugs are kept in locked storage areas, except intravenous infusion solutions which shall be stored according to a system of accountability, as specified in the facility's policies and procedures. Drug storage and preparation areas shall be kept locked when not in use. Drugs requiring refrigeration shall be kept in a separate, locked box in the refrigerator, in a locked refrigerator, or in a refrigerator in the locked medication room. The refrigerator shall have a thermometer to indicate temperature in conformance with U.S.P. (United States Pharmacopoeia) requirements;
6. Needles and syringes are procured, stored, used, and disposed of in accordance with the laws of the State of New Jersey and amendments thereto. There shall be a system of accountability for the disposal of used needles and syringes which shall not necessitate the counting of individual needles and syringes after they are placed in the container for disposal; and
7. Drugs are stored and verified according to the following:
 - i. Drugs in Schedules III and IV of the Controlled Dangerous Substances Acts and amendments thereto shall be stored under lock and key. Drugs in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be stored in a separate, locked, permanently affixed compartment within the locked medication cabinet, medication room, refrigerator, or mobile medication cart. The key to the separate, locked compartment for Schedule II drugs shall not be the same key that is used to gain access

to storage areas for other drugs (except that drugs in Schedule II in a unit dose drug distribution system shall be kept under double lock and key, but may be stored with other controlled drugs);

ii. The keys for the storage compartments for drugs in Schedules II, III, and IV shall be kept on a person who meets the criteria listed in (a)1i through iv above; and

iii. Except in a unit dose drug distribution system, a declining inventory of all drugs in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be made at the termination of each tour of duty wherever these drugs are maintained. This record shall be signed by both the outgoing and incoming nurses who shall meet the criteria listed in (a)1i through iv above. The following shall be recorded: name of the patient receiving the drug, prescriber's name, name and strength of the drug, date received from the pharmacy, date of administration, dosage administered, method of administration, signature of the licensed nurse who administered the drug, amount of drug remaining, amount of drug destroyed or wasted (when appropriate), and the signature of the nurse who witnessed the destruction or wasting of the drug (when appropriate).

SUBCHAPTER 10. PHARMACEUTICAL SERVICES

8:43H-10.1 Provision of pharmaceutical services

Pharmaceutical services shall be provided to patients 24 hours a day, seven days a week, directly in the facility. If the facility has an institutional pharmacy, the pharmacy shall be licensed by the New Jersey State Board of Pharmacy and operated in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and shall possess a current Drug Enforcement Administration registration and a Controlled Dangerous Substance registration from the Department in accordance with the Controlled Dangerous Substances Acts.

8:43H-10.2 Appointment of pharmacist

(a) A pharmacist shall be appointed and shall be responsible for the direction, provision, and quality of the pharmaceutical services. The pharmacist shall be responsible for, but not limited to, the following:

1. Together with the Pharmacy and Therapeutics Committee, developing and maintaining written objectives, policies, and a procedure manual, an organizational plan, and a quality assurance program for the pharmaceutical service;
2. Participating in planning and budgeting for the pharmaceutical service;
3. Coordinating and integrating the pharmaceutical service with other patient care services to provide a continuum of care for the patient;
4. Assisting in developing and maintaining written job descriptions for pharmacy personnel, if any, and assigning duties based upon education, training, competencies, and job descriptions;
5. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan;
6. Maintaining a means of identifying the signatures of all prescribers authorized to use the pharmaceutical service for prescriptions; and
7. Maintaining records of the transactions of the pharmaceutical service, as required by Federal, State, and local laws, to ensure control and accountability of all drugs. This shall include a system of controls and records for the requisitioning and dispensing of pharmaceutical supplies to all services of the facility.

8:43H-10.3 Pharmacy and Therapeutics Committee

(a) A multidisciplinary Pharmacy and Therapeutics Committee shall be appointed by and accountable to the governing authority. The committee shall be responsible for, but not limited to, the following:

1. Development of policies and procedures, approved by the governing authority, and documentation of their review. These policies and procedures shall govern evaluation, selection, obtaining, dispensing, storage, distribution, administration, use, control, accountability, and safe practices pertaining to all drugs used in the treatment of patients;

2. Development and at least annual review and approval of a current formulary ("Formulary" means a list of all drugs approved for use in the facility. It may also list drugs which are considered appropriate for treating specific illnesses, or may list substitutions of chemically or therapeutically equivalent drugs for trade name prescription drugs.); and

3. Approval of the minimal pharmaceutical reference materials to be retained at each nursing unit, those to be kept in the pharmacy and made available to at least nursing personnel and the medical staff, and methods for communicating product information to at least nursing personnel and the medical staff.

8:43H-10.4 Policies and procedures for drug administration

(a) The facility's policies and procedures shall ensure that the right drug is administered to the right patient in the right amount through the right route of administration and at the right time. Policies and procedures shall include, but not be limited to, the following:

1. Policies and procedures for the implementation of a unit dose drug distribution system;

i. The facility shall have a unit dose drug distribution system. ("Unit dose drug distribution system" means a system in which drugs are delivered to patient areas in single unit packaging. Each patient has his or her own receptacle, such as a tray, bin, box, cassette, drawer, or compartment, labeled with his or her first and last name and room number, and containing his or her own medications. Each medication is individually wrapped and labeled with the generic name, trade name (if appropriate), and strength of the drug, lot number or reference code, expiration date, and manufacturer's or distributor's name, and ready for administration to the patient.) At least one exchange of patient medications shall occur every three days. The number of doses for each patient shall be sufficient for a maximum of 72 hours. No more than a 72-hour supply of doses shall be delivered to or available in the patient care area at any time;

ii. Cautionary instructions and additional information, such as special times of administration, regarding dispensed medications shall be transmitted to the personnel responsible for the administration of the medications;

iii. If the facility repackages medications in single unit packages the facility's policies and procedures shall indicate how such packages shall be labeled to identify the lot number or reference code and manufacturer's or distributor's name; and

iv. Policies and procedures shall specify the drugs which will not be obtained from manufacturers or distributors in single unit packages and will not be repackaged as single units in the facility;

2. Methods for procuring drugs on a routine basis, in emergencies, and in the event of disaster;

3. Policies and procedures, approved by the Pharmacy and Therapeutics Committee in accordance with these rules, regarding emergency kits and emergency carts, including the following:

i. Approval of their locations and contents;

ii. Provision for pediatric doses in areas of the facility where pediatric emergencies may occur;

iii. Determination of the frequency of checking contents, including expiration dates;

iv. Approval of the assignment of responsibility for checking contents; and

v. A requirement that emergency kits are secure but are not kept under lock and key;

4. Policies and procedures, approved by the medical staff of the facility, to ensure that all drugs are ordered in writing, that the written order specifies the name of the drug, dose, frequency, and route of administration, that the order is signed and dated by the prescriber, and that all drugs are administered in accordance with the laws of the State of New Jersey;

5. Policies and procedures for drug administration, including, but not limited to, establishment of the times for administration of drugs prescribed;

6. If facility policy permits, policies and procedures regarding self-administration of drugs. ("Self-administration" means a procedure in which any medication is taken orally, injected, inserted, or top-

ically or otherwise administered by a patient to himself or herself.) Policies and procedures for self-administration shall include, but not be limited to, the following:

i. A requirement that self-administration be permitted only upon a written order of the prescriber;

ii. Storage of drugs;

iii. Labeling of drugs;

iv. Methods for documentation in the patient's medical record of self-administered drugs;

v. Training and education of patients in self-administration and the safe use of drugs; and

vi. Establishment of precautions so that patients do not share their drugs or take the drugs of another patient;

7. Policies and procedures for documenting and reviewing adverse drug reactions and medication errors. Allergies shall be documented in the patient's medical record and on its outside front cover;

8. Policies and procedures for ensuring the immediate delivery of stat. doses. Stat. (statim) shall mean immediately;

9. If facility policy permits, policies and procedures for the use of floor stock drugs. "Floor stock" means a supply of drugs provided by the pharmacist to a service or unit in a labeled container in limited quantities, as approved by the Pharmacy and Therapeutics Committee of the facility. A list shall be maintained of floor stock drugs and their amounts stored throughout the facility;

10. Policies and procedures for discontinuing drug orders, including, but not limited to, the following:

i. The length of time drug orders may be in effect, for drugs not specifically limited as to duration of use or number of doses when ordered, including intravenous infusion solutions; and

ii. Notification of the prescriber by specified personnel and within a specified period of time prior to the expiration of a drug order to ensure that the drug is discontinued if no specific renewal is ordered;

11. Policies and procedures for the use of intravenous infusion solutions. The facility shall have an intravenous infusion admixture service operated by the pharmaceutical service. If the preparation, sterilization, and labeling of parenteral medications and solutions are performed in the exempt areas within the facility, as specified by facility policy, but not under direct supervision of a pharmacist, the pharmacist shall be responsible for providing written guidelines and for approving the procedures. Policies and procedures for the use of intravenous infusion solutions shall include, but not be limited to, the following:

i. Safety measures for the preparation, sterilization, and admixture of intravenous infusion solutions. These shall be prepared under a laminar air flow hood, except in patient care areas specified by facility policy;

ii. Quality control procedures for laminar air flow hoods, including cleaning of the equipment used on each shift, microbiological monitoring as required by the infection prevention and control policies and procedures of the facility, and documented checks at least every 12 months for operational efficiency; and

iii. Policies and procedures for the labeling of intravenous infusion solutions, such that a supplementary label is affixed to the container of any intravenous infusion solution to which drugs are added. The label shall include the patient's first and last name and room number; the name of the solution; the name and amount of the drug(s) added; the date and time of the addition; the date, time, and rate of administration; the name or initials of the pharmacy personnel who prepared the admixture; the name, initials, or identifying code of the pharmacist who prepared or supervised preparation of the admixture; supplemental instructions, including storage requirements; and the expiration date of the solution;

12. Policies and procedures for the storage of intravenous infusion solutions, which shall be stored according to a system of accountability specified in the facility's policies and procedures;

13. If facility policy permits, policies and procedures for drug research and the use of investigational drugs, in accordance with Federal and State rules and regulations;

14. Policies and procedures regarding the purchase, storage, safeguarding, accountability, use, and disposition of drugs, in accordance

with New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and the Controlled Dangerous Substances Acts and amendments thereto;

15. Policies and procedures for the procurement, storage, use, and disposition of needles and syringes in accordance with the laws of the State of New Jersey and amendments thereto. There shall be a system of accountability for the purchase, storage, and distribution of needles and syringes. There shall be a system of accountability for the disposal of used needles and syringes which shall not necessitate the counting of individual needles and syringes after they are placed in the container for disposal;

16. Policies and procedures regarding the control of drugs subject to the Controlled Dangerous Substances Acts and amendments thereto, in compliance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and all other Federal and State laws and regulations concerning procurement, storage, dispensing, administration, and disposition. Such policies and procedures shall include, but not be limited to, the following:

- i. Provision for a verifiable record system for controlled drugs;
- ii. Policies and procedures to be followed in the event that the inventories of controlled drugs cannot be verified or drugs are lost, contaminated, unintentionally wasted, or destroyed. A report of any such incident shall be written and signed by the persons involved and any witnesses present; and
- iii. In all areas of the facility where drugs are dispensed, administered, or stored, procedures for the intentional wasting of controlled drugs, including the disposition of partial doses, and for documentation which includes the signature of a second person who shall witness the disposition;

17. Policies and procedures for the maintenance of records of prescribers' Drug Enforcement Administration numbers for New Jersey;

18. Specification of the information on drugs, their indications, contraindications, actions, reactions, interactions, cautions, precautions, toxicity, and dosage, to be provided in the pharmacy and in each nursing unit. Current antidote information and the telephone number of the regional poison control center shall also be provided in the pharmacy and in each nursing unit;

19. A list of abbreviations, metric apothecary conversion charts, and chemical symbols, approved by the medical staff, to be kept in each nursing unit; and

20. Policies and procedures concerning the activities of medical and pharmaceutical sales representatives in the facility. Drug samples shall not be accepted, placed or maintained in stock, distributed, or used in the facility.

8:43H-10.5 Inspection of premises

At intervals specified in the policy and procedure manual, a pharmacist shall inspect all areas in the facility where drugs are dispensed, administered, or stored, and shall maintain records of such inspections.

8:43H-10.6 Storage of drugs

(a) All drugs, except intravenous infusion solutions shall be kept in locked storage areas. Drug storage and preparation areas shall be kept locked when not in use.

(b) All drugs shall be stored in accordance with manufacturers' instructions. Drugs requiring refrigeration shall be kept in a separate, locked box in the refrigerator, in a locked refrigerator, or in a refrigerator in the locked medication room, at or near the nursing unit. The refrigerator shall have a thermometer to indicate temperature in conformance with U.S.P. (United States Pharmacopoeia) requirements.

(c) All drugs in Schedule II of the Controlled Dangerous Substances Acts and amendments thereto shall be stored in a separate, locked, permanently affixed compartment within the locked medication cabinet, medication room, refrigerator, or mobile medication cart. The key to the separate, locked compartment for Schedule II drugs shall not be the same key that is used to gain access to storage areas for other drugs.

(d) Drugs for external use shall be kept separate from drugs for internal use.

SUBCHAPTER 11. DIETARY SERVICES

8:43H-11.1 Provision of dietary services

The facility shall provide dietary services to meet the daily nutritional needs of patients, directly in the facility.

8:43H-11.2 Appointment of dietitian

(a) The facility shall appoint a full-time dietitian who shall be responsible for the direction, provision, and quality of the dietary service. The dietitian shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the dietary service;
2. Participating in planning and budgeting for the dietary service;
3. Ensuring that dietary services are provided as specified in the dietary care plan and are coordinated with other patient care services to provide a continuum of care for the patient;
4. Assisting in developing and maintaining written job descriptions for dietary personnel, and assigning duties based upon education, training, competencies, and job descriptions; and
5. Participating in staff education activities and providing consultation to facility personnel.
6. Providing nutritional counseling.

8:43H-11.3 Food service supervisor

The facility shall appoint a full-time food service supervisor who functions under the direction of a dietitian. A dietitian and/or food service supervisor shall be on duty seven days a week.

8:43H-11.4 Responsibilities of dietitians

(a) In accordance with written job descriptions, dietitians shall be responsible for providing dietary care, including, but not limited to, the following:

1. Assessing the dietary needs of the patient, preparing the dietary care plan based on the assessment, providing dietary services to the patient as specified in the dietary care plan, reassessing the patient's response to services, and revising the dietary care plan. Each of these activities shall be documented in the patient's medical record;
2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan;
3. Writing clinical notes and progress notes; and
4. Assisting the patient in activities of daily living based upon the patient's abilities, disabilities, and rehabilitation goals.

8:43H-11.5 Requirements for dietary services

(a) Dietary personnel shall be scheduled for a period of at least 12 hours daily.

(b) The dietary services shall comply with the provisions of N.J.A.C. 8:24.

(c) A current diet manual shall be available in the dietary service and in each nursing unit.

(d) Meal planning shall be in accordance with, but not limited to, the following:

1. Menus shall be prepared with regard for the nutritional and therapeutic needs, cultural backgrounds, food habits, and personal food preferences of patients;

2. Written, dated menus shall be planned at least 14 days in advance of all diets. The same menu shall not be used more than once in seven days; and

3. Current menus with portion sizes and any changes in menus shall be posted in the food preparation area. Menus, with changes, shall be kept on file in the dietary department for at least 30 days.

(e) Meal preparation and serving shall be in accordance with, but not limited to, the following:

1. Diets served shall be consistent with the diet manual and in accordance with physicians' orders;

2. Food shall be prepared by cutting, chopping, grinding, or blending to meet the needs of each patient;

3. At least three meals or their equivalent shall be prepared and served daily to patients. At least two meals shall contain three or more menu items, one of which shall be or shall include a high quality protein food such as meat, fish, eggs, or cheese. Each meal shall

represent no less than 20 percent of the day's total calories, and at least 10 percent of the day's total calories shall be provided by protein;

4. Nutrients and calories shall be provided for each patient, as ordered by a physician, based upon current recommended dietary allowances of the Food and Nutrition Board of the National Academy of Sciences, National Research Council, adjusted for age, sex, weight, physical activity, and therapeutic needs of the patient;

5. Between-meal and bedtime nourishments shall be provided and beverages shall be available at all times for each patient, unless contraindicated by a physician as documented in the patient's medical record;

6. Substitute foods and beverages of equivalent nutritional value shall be available to all patients;

7. No more than 14 hours shall elapse between an evening meal and breakfast the next morning; and

8. Designated staff shall be responsible for observing meals refused or missed and documenting the name of the patient and the meal refused or missed.

(f) A record shall be maintained for each patient, identifying the patient by name, location, diet order, and other information, such as meal patterns when on a calculated diet, and allergies. Such record shall appear on the patient's tray or in the dining room.

SUBCHAPTER 12. PHYSICAL THERAPY, OCCUPATIONAL THERAPY, RESPIRATORY THERAPY, SPEECH-LANGUAGE PATHOLOGY, AND AUDIOLOGY SERVICES

8:43H-12.1 Provision of physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and audiology services

(a) The facility shall provide physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and audiology services directly in the facility to meet the rehabilitation needs of patients.

(b) The facility shall provide to each adult patient at least three hours of services per day, five days per week, which shall include physical therapy and shall include at least one of the following: occupational therapy and/or speech-language pathology services.

(c) The facility shall provide to each pediatric patient at least three hours of services per day, five days per week, which shall include at least two of the following: physical therapy, occupational therapy, speech-language pathology, and respiratory therapy services.

8:43H-12.2 Appointment of physical therapist, occupational therapist, respiratory therapist, speech-language pathologist, and audiologist

(a) The facility shall appoint a physical therapist, occupational therapist, respiratory therapist, speech-language pathologist, and audiologist who shall be responsible for the direction, provision, and quality of the physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and audiology service, respectively. The physical therapist, occupational therapist, respiratory therapist, speech-language pathologist, and audiologist shall be responsible for, but not limited to, the following:

1. Developing and maintaining written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and audiology service, respectively;

2. Participating in planning and budgeting for the physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and audiology service, respectively;

3. Ensuring that services are provided as specified in the physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and audiology care plan, respectively, and are coordinated with other patient care services to provide a continuum of care for the patient.

4. Assisting in developing and maintaining written job descriptions for physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and audiology personnel, respectively,

and assigning duties based upon education, training, competencies, and job descriptions; and

5. Participating in staff education activities and providing consultation to facility personnel.

8:43H-12.3 Responsibilities of physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and audiology personnel

(a) In accordance with the State of New Jersey Physical Therapy Practice Act, N.J.S.A. 45:9-37.11 et seq., for physical therapy personnel, and in accordance with the State of New Jersey Audiology and Speech-Language Pathology Practice Act, N.J.S.A. 45:3B-1 et seq., for speech-language pathology and audiology personnel, and in accordance with written job descriptions, each physical therapist, occupational therapist, respiratory therapist, speech-language pathologist, or audiologist shall be responsible for providing patient care, including, but not limited to, the following:

1. Assessing the physical therapy, occupational therapy, respiratory therapy, speech-language pathology, or audiology needs, respectively, of the patient, preparing the care plan based on the assessment, providing services as specified in the physical therapy, occupational therapy, respiratory therapy, speech-language pathology, or audiology care plan, respectively, reassessing the patient's response to services, and revising the care plan. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan;

3. Writing clinical notes and progress notes; and

4. Assisting the patient in activities of daily living based upon the patient's abilities, disabilities, and rehabilitation goals.

(b) Driver evaluation services shall be provided by occupational therapists.

SUBCHAPTER 13. SOCIAL WORK SERVICES AND PSYCHOLOGY SERVICES

8:43H-13.1 Provision of social work services and psychology services

The facility shall provide social work services and psychology services to patients directly in the facility.

8:43H-13.2 Appointment of social worker and psychologist

(a) The facility shall appoint a full-time social worker who has a master's degree in social work, and a psychologist. The social worker and the psychologist shall be responsible for the direction, provision, and quality of the social work service and psychology service, respectively. The social worker and the psychologist shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the social work service and psychology service, respectively;

2. Participating in planning and budgeting for the social work service and psychology service, respectively;

3. Ensuring that services are provided as specified in the social work care plan and psychology care plan, respectively, and are coordinated with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for social work service personnel and psychology service personnel, respectively, and assigning duties based upon education, training, competencies, and job descriptions; and

5. Participating in staff education activities and providing consultation to facility personnel.

8:43H-13.3 Responsibilities of social worker and psychology staff

(a) In accordance with written job descriptions, each social worker or psychology staff member shall be responsible for providing patient care, including, but not limited to, the following:

1. Assessing the social work needs or psychological needs, respectively, of the patient, preparing the social work care plan or psychology care plan, respectively, based on the assessment, providing services as specified in the social work care plan or psychology care

plan, respectively, reassessing the patient's response to services, and revising the social work care plan or psychology care plan, respectively. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan; and

3. Writing clinical notes and progress notes.

SUBCHAPTER 14. RECREATIONAL THERAPY SERVICES

8:43H-14.1 Provision of recreational therapy services

(a) The facility shall provide recreational therapy services to patients. A planned, diversified program of recreational activities for patients, including daytime, evening, individual, group, and/or independent activities, on at least six days of the week, directly in the facility.

(b) Patients shall have the opportunity to communicate with members of the community, to participate in community activities, and to utilize community resources, unless contraindicated by the patient's physician as documented in the patient's medical record.

(c) Indoor and outdoor recreation shall be provided.

8:43H-14.2 Appointment of recreation therapist

(a) The facility shall appoint a recreation therapist who shall be responsible for the direction, provision, and quality of the recreational therapy service. The recreation therapist shall be responsible for, but not limited to, the following:

1. Developing and implementing written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for the recreational therapy service;

2. Participating in planning and budgeting for the recreational therapy service;

3. Ensuring that services are provided as specified in the recreational therapy care plan and are coordinated with other patient care services to provide a continuum of care for the patient;

4. Assisting in developing and maintaining written job descriptions for recreational therapy personnel, and assigning duties based upon education, training, competencies, and job descriptions;

5. Participating in staff education activities and providing consultation to facility personnel; and

6. Posting a current weekly recreational activities schedule where it can be read by patients, staff, and visitors, and maintaining a record of such schedules for one year.

8:43H-14.3 Responsibilities of recreation therapy personnel

(a) In accordance with written job descriptions, each recreation therapist shall be responsible for providing patient care, including, but not limited to, the following:

1. Assessing the recreational therapy needs of the patient, preparing the recreational therapy care plan based on the assessment, providing recreational therapy services as specified in the recreational therapy care plan, reassessing the patient's response to services, and revising the recreational therapy care plan. Each of these activities shall be documented in the patient's medical record;

2. Participating as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan;

3. Writing clinical notes and progress notes; and

4. Assisting the patient in activities of daily living based upon the patient's abilities, disabilities, and rehabilitation goals.

SUBCHAPTER 15. ORTHOTIC AND PROSTHETIC SERVICES, VOCATIONAL TESTING, DRIVER TRAINING SERVICES, DENTAL SERVICES, LABORATORY AND RADIOLOGICAL SERVICES

8:43H-15.1 Provision of services

(a) The facility shall provide orthotic and prosthetic services, vocational testing, dental services, and laboratory and radiological services directly in the facility to patients who need these services.

(b) Driver training services shall be provided.

8:43H-15.2 Qualifications of personnel

(a) Orthotic and prosthetic services shall be provided by persons certified or eligible for certification by the American Board for Certification in Orthotics and Prosthetics, Inc.

(b) Vocational testing services shall be provided by a rehabilitation counselor who is certified or eligible for certification by the Commission on Rehabilitation Counselor Certification.

(c) Driver training services shall be provided by persons licensed as commercial driving school instructors by the New Jersey State Department of Law and Public Safety, Division of Motor Vehicles.

8:43H-15.3 Provision of dental services

(a) Dental services shall be provided to patients, including, but not limited to, emergency dental care to relieve pain and infection.

(b) The facility, with consultation from a dentist, shall establish and implement written policies and procedures for dental services for patients and for staff education regarding dental care of patients.

(c) The dentist shall document in the patient's medical record all dental services provided, at the time services are provided.

8:43H-15.4 Provision of laboratory and radiological services

(a) Laboratory services shall be provided. Laboratories shall be licensed or approved by the Department.

(b) Radiological services shall be provided. Facilities providing radiological services shall be licensed or approved by the New Jersey State Department of Environmental Protection, Bureau of Radiation Protection.

SUBCHAPTER 16. EMERGENCY SERVICES AND PROCEDURES

8:43H-16.1 Emergency plans and procedures

(a) The facility shall have a written emergency plan which shall include plans and procedures to be followed in case of medical emergencies, equipment breakdown, fire, or other disaster.

(b) Procedures for emergencies shall specify persons to be notified, locations of emergency equipment and alarm signals, evacuation routes, procedures for evacuating patients, frequency of fire drills, and tasks and responsibilities assigned to all personnel.

(c) The emergency plans and all emergency procedures shall be conspicuously posted throughout the facility. Personnel shall be trained in the location and use of emergency equipment in the facility.

8:43H-16.2 Drills and tests

(a) Simulated drills of emergency plans shall be conducted on each shift at least four times a year (a total of 12 drills) and documented, including the date, hour, description of the drill, participating staff, and signature of the person in charge. The four drills on each shift shall include at least one drill for emergencies due to fire. The facility shall conduct at least one drill per year for emergencies due to another type of disaster, such as storm, flood, other natural disaster, bomb threat, or nuclear accident.

(b) The facility shall test at least one manual pull alarm each week of the year and maintain documentation of test dates, location of each manual pull alarm tested, persons testing the alarm, and its condition.

(c) Fire extinguishers shall be examined annually and maintained in accordance with manufacturers' and National Fire Protection Association (N.F.P.A.) requirements.

SUBCHAPTER 17. PATIENT RIGHTS

8:43H-17.1 Policies and procedures regarding patient rights

(a) The facility shall establish and implement written policies and procedures regarding the rights of patients. These policies and procedures shall be available to patients, staff, and the public and shall be conspicuously posted in the facility.

(b) The staff of the facility shall be trained to implement policies and procedures regarding patient rights.

(c) The facility shall comply with all applicable State and Federal statutes and rules concerning patient rights, including N.J.S.A. 52:27G-7.1. The State Office of the Ombudsman for the Institutionalized Elderly shall be notified of any suspected patient abuse or exploitation pursuant to N.J.S.A. 52:27G-7.1, if the patient is 60 years of age or older.

8:43H-17.2 Rights of each patient

(a) Patient rights, policies, and procedures shall ensure that, as a minimum, each patient admitted to the facility:

1. Is informed of these rights, as evidenced by his or her written acknowledgement, and receives an explanation, in terms that he or she can understand, and a copy of the patient rights;

2. Is informed of services available in the facility, of the names and professional status of the personnel providing and/or responsible for his or her care, and of fees and related charges, including the payment, fee, deposit, and refund policy of the facility and any charges for services not covered by sources of third-party payment or not covered by the facility's basic rate;

3. Is informed of the plan for treatment and of his or her condition, unless medically contraindicated as documented by a physician in the patient's medical record, is informed of the risks associated with the use of any drugs and/or procedures, and has the opportunity to participate in the planning of his or her treatment, to refuse medication and treatment, and to refuse to participate in experimental research;

4. Is informed of the alternatives for care and treatment;

5. Is transferred or discharged only for medical reasons or for his or her welfare or that of other patients, upon the written order of the patient's physician, and such actions are documented in the patient's medical record, except in an emergency situation, in which case the administrator shall notify the physician and the family immediately, and document the reason for the transfer in the patient's medical record. If a transfer or discharge on a nonemergency basis is requested by the facility, including transfer or discharge for non-payment for the patient's stay (except as prohibited by sources of third party payment), the patient and his or her family shall be given at least 10 days advance notice of such transfer or discharge;

6. Has access to and/or may obtain a copy of his or her medical record, in accordance with the facility's policies and procedures and with applicable Federal and State laws and rules;

7. Is free from mental and physical abuse, free from exploitation, and free from the use of chemical and physical restraints, except those restraints used in accordance with N.J.A.C. 8:43H-6.1(a)17. Drugs and other medication shall not be used for punishment or for convenience of facility personnel;

8. Is assured confidential treatment of his or her records and disclosures in accordance with State and Federal statutes and rules, and shall have the opportunity to approve or refuse their release to any individual outside the facility, except in the case of the patient's transfer to another health care facility or as required by law or third-party payment contract;

9. Is treated with courtesy, consideration, respect, and recognition of his or her dignity, individuality, and right to privacy, including, but not limited to, auditory and visual privacy and confidentiality concerning patient treatment and disclosures. Privacy of the patient's body shall be maintained during the toileting, bathing, and other activities of personal hygiene, except as needed for patient safety or assistance;

10. Is not required to perform work for the facility unless the work is part of the patient treatment plan and is performed voluntarily by the patient. Such work shall be in accordance with local, State, and Federal laws and rules;

11. May associate and communicate privately with persons of his or her choice, may join with other patients or individuals within or outside the facility to work for improvements in patient care, may send and receive personal mail unopened, and, upon his or her request, shall be given assistance in the reading and writing of correspondence;

12. May participate in facility activities and meet with, and participate in activities of, social, religious, and community groups. Arrangements shall be made, at the patient's expense, for attendance at religious services of his or her choice, when requested;

13. Is allowed to leave the facility if his or her physician so approves and so indicates in the patient's medical record. A signout sheet shall record the patient's whereabouts at these times;

14. Is assured security in retaining and using personal clothing and possessions as space permits, unless to do so would be unsafe or would infringe upon rights of other patients. If the patient has prop-

erty on deposit with the facility, he or she shall have daily access to such property during specific periods established by the facility;

15. Is allowed daily visitation at least between the hours of 8:00 A.M. and 8:00 P.M. and, if critically ill, is allowed visits from his or her family at any time, unless medically contraindicated (as documented, by a physician, in the patient's medical record). The facility shall conspicuously post the visiting hours, which shall include at least the time between the hours of 8:00 A.M. and 8:00 P.M. daily. Members of the clergy shall be notified by the facility at the patient's request and shall be admitted at the request of the patient and/or family at any time. Privacy shall be ensured for visits with family, friends, clergy, or for professional or business purposes;

16. Is allowed to conduct private telephone conversations between the hours of 8:00 A.M. and 8:00 P.M. daily;

17. Is not required to go to bed unless ordered by a physician, with documentation in the patient's medical record;

18. Is assured of civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, or any attendance at religious services, shall be imposed upon any patient;

19. Is not the object of discrimination with respect to participation in recreational activities, meals, or other social functions because of age, race, religion, sex, nationality, or ability to pay. The patient's participation may be restricted or prohibited if recommended by the patient's physician in the patient's medical record and consented to by the patient;

20. Is not deprived of any constitutional, civil, and/or legal rights solely because of admission to the facility; and

21. Is encouraged and assisted, throughout the period of stay, to exercise rights as a patient and as a citizen, may voice grievances on behalf of himself or herself or others, and has the right to recommend changes in policies and services to facility personnel and/or to outside representatives of the patient's choice, free from restraint, interference, coercion, discrimination, or reprisal.

(b) The administrator shall provide all patients and/or their families with the name, address, and telephone numbers of the following offices where complaints may be lodged:

Division of Health Facilities Evaluation
 New Jersey State Department of Health
 CN 367
 Trenton, New Jersey 08625
 Telephone: (800) 792-9770
 and
 State of New Jersey
 Office of the Ombudsman for the
 Institutionalized Elderly
 CN 808
 Trenton, New Jersey 08625
 Telephone: (800) 624-4262

These telephone numbers shall be conspicuously posted in the facility at every public telephone and on all bulletin boards used for posting public notices.

SUBCHAPTER 18. DISCHARGE PLANNING SERVICES

8:43H-18.1 Discharge plan

(a) The facility plan shall provide discharge planning services to patients.

(b) Each patient shall have a discharge plan. Discharge planning shall be initiated upon admission. Plans for discharge shall be reviewed and revised.

(c) The patient and, if indicated, family members shall participate in developing and implementing the patient discharge plan. Participation shall be documented in the patient medical record.

(d) The discharge plan shall include instructions given to the patient and/or his or her family for care following discharge.

8:43H-18.2 Discharge planning policies and procedures

(a) Written policies and procedures shall be established and implemented for discharge planning services, which shall describe:

1. The functions of the person or persons responsible for planning, providing, and/or coordinating discharge planning services;

2. The time period for completing each patient's discharge plan;
3. The time period that may elapse before a reevaluation of each patient's discharge plan is made;
4. Use of the multidisciplinary team in discharge planning;
5. Criteria for patient discharge; and
6. Methods of patient and family involvement in developing and implementing the discharge plan.

SUBCHAPTER 19. MEDICAL RECORDS

8:43H-19.1 Maintenance of medical records

- (a) A current medical record shall be maintained for each patient and shall contain documentation of all services provided.
- (b) Written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for medical record services shall be developed and implemented.
- (c) A record system shall be maintained in which the patient's complete medical record is filed as one unit in one location within the facility.

8:43H-19.2 Assignment of responsibility

Responsibility for the medical record service shall be assigned to a full-time employee who, if not a medical record practitioner, functions in consultation with a person so qualified.

8:43H-19.3 Contents of medical records

- (a) The patient medical record shall include, but not be limited to, the following:
 1. Patient identification data, including name, date of admission, address, date of birth, race and religion (optional), sex, referral source, payment plan, marital status, and the name, address, and telephone number of the person(s) to be notified in an emergency;
 2. The patient's signed acknowledgement that he or she has been informed of and given a copy of patient rights;
 3. A summary of the admission interview;
 4. Documentation of the medical history and physical examination, signed and dated by the physician;
 5. A patient treatment plan, signed and dated by the physician;
 6. Care plans and patient assessments for each service providing care to the patient;
 7. Clinical notes, which shall be entered on the day service is rendered;
 8. Progress notes;
 9. Documentation of the patient's participation in his or her treatment plan, or documentation by a physician that the patient's participation is medically contraindicated;
 10. A record of medications administered, including the name and strength of the drug, date and time of administration, dosage administered, method of administration, and signature of the person who administered the drug;
 11. A record of self-administered medications, if the patient self-administers medications, in accordance with the facility's policies and procedures;
 12. Documentation of allergies in the medical record and on its outside front cover;
 13. Documentation of sexual counseling and environmental modification services;
 14. Documentation of orthotic and prosthetic services, vocational testing, driver training, laboratory and radiological, and dental services;
 15. A record of referrals to other health care providers;
 16. Documentation of consultations;
 17. A record of the clothing, personal effects, valuables, funds, and other property deposited by the patient with the facility for safekeeping, signed by the patient or his or her family, and substantiated by receipts given to the patient or his or her family;
 18. Any signed written informed consent forms;
 19. A record of any treatment, drug, or service offered by personnel of the facility and refused by the patient;
 20. Documentation of injuries, accidents, incidents, or death;
 21. The discharge plan; and
 22. The discharge summary, in accordance with N.J.S.A. 26:8-5 et seq.

8:43H-19.4 Requirements for entries

- (a) All orders for patient care shall be prescribed in writing and signed and dated by the prescriber, in accordance with the laws of the State of New Jersey.
- (b) All entries in the patient medical record shall be legible and signed and dated by the person entering them.

8:43H-19.5 Medical records policies and procedures

- (a) The facility shall establish and implement written policies and procedures regarding medical records including, but not limited to, policies and procedures for the following:
 1. The protection of medical record information against loss, tampering, alteration, destruction, or unauthorized use. The patient's consent shall be obtained for release of medical record information;
 2. The specific period of time in which the medical record shall be completed following patient discharge, and disciplinary action for non-compliance;
 3. The transfer of patient information when the patient is transferred to another health care facility, or if the patient becomes an outpatient at the same facility; and
 4. The release and/or provision of copies of the patient's medical record to the patient and/or the patient's authorized representative. Such written policies and procedures shall include, but not be limited to, the following:
 - i. Establishment of a fee schedule for obtaining copies of the patient's medical record;
 - ii. Policies and procedures regarding patient access to his or her medical record during business hours;
 - iii. Policies and procedures regarding availability of the patient's medical record to the patient's authorized representative if it is medically contraindicated (as documented by a physician in the patient's medical record) for the patient to have access to or obtain copies of the record; and
 - iv. Procedures to ensure that the patient's medical record is provided within 30 calendar days of the written request.

8:43H-19.6 Preservation, storage, and retrieval of medical records

- (a) All medical records shall be preserved in accordance with N.J.S.A. 26:8-5 et seq.
- (b) If the facility plans to cease operations, it shall notify the Department in writing, at least 14 days before cessation of operation, of the location where medical records shall be stored and of methods for their retrieval.

SUBCHAPTER 20. INFECTION PREVENTION AND CONTROL SERVICES

8:43H-20.1 Administrator's responsibility

The administrator shall ensure the development and implementation of an infection prevention and control program.

8:43H-20.2 Infection control policies and procedures

- (a) Written policies and procedures shall be established and implemented regarding infection prevention and control, including, but not limited to, policies and procedures regarding the following:
 1. A definition of nosocomial infection;
 2. In accordance with N.J.A.C. 8:57, a system for investigating, reporting, and evaluating the occurrence of all infections or diseases which are reportable or conditions which may be related to activities and procedures of the facility, and maintaining records for all patients or personnel having these infections, diseases, or conditions;
 3. Reporting of reportable and other diseases in accordance with N.J.A.C. 8:57;
 4. Exclusion from work, and authorization to return to work, for personnel with communicable diseases;
 5. Surveillance techniques to minimize sources and transmission of infection;
 6. Techniques to be used during each patient contact, including handwashing before and after caring for a patient;
 7. The prevention of decubitus ulcers;
 8. Isolation of patients, including criteria for isolation;
 9. Sterilization, disinfection, and cleaning practices and techniques used in the facility, including, but not limited to, the following:

i. Care of utensils, instruments, solutions, dressings, articles, and surfaces;

ii. Selection, storage, use, and disposition of disposable and non-disposable patient care items. Disposable items shall not be reused;

iii. Methods to ensure that sterilized materials are packaged and labeled to maintain sterility and to permit identification of expiration dates; and

iv. Care of urinary catheters, intravenous catheters, respiratory therapy equipment, and other devices and equipment that provide a portal of entry for pathogenic microorganisms; and

10. The collection, storage, handling, and disposition of all pathological and infectious wastes within the facility, and for the collection, storage, handling, and disposition of all pathological and infectious wastes to be removed from the facility, including, but not limited to, the following:

i. Needles and syringes shall be destroyed in accordance with N.J.S.A. 2A:170-25.17, and amendments thereto;

ii. Solid, sharp, or rigid items shall be placed in a puncture-resistant container and incinerated or compacted prior to disposal;

iii. Non-rigid items, such as blood tubing and disposable equipment and supplies, shall be incinerated or placed in three mil plastic bags or equivalent and disposed of in a sanitary landfill approved by the New Jersey State Department of Environmental Protection;

iv. Fecal matter and liquid waste, such as blood and blood products, shall be flushed into the sewerage system; and

v. All pathology specimens and waste, including gross and microscopic tissue removed surgically or by any other procedure, shall be incinerated.

(b) Each service in the facility shall develop written policies and procedures for the infection control program for that service.

8:43H-20.3 Staff orientation and education

All personnel shall receive orientation at the time of employment and continuing in-service education regarding the infection control program.

SUBCHAPTER 21. HOUSEKEEPING, SANITATION, AND SAFETY

8:43H-21.1 Provision of services

(a) The facility shall provide and maintain a sanitary and safe environment for patients.

(b) The facility shall provide housekeeping, laundry, and pest control services.

(c) Written objectives, policies, a procedure manual, an organizational plan, and a quality assurance program for housekeeping, sanitation, and safety services shall be developed and implemented.

8:43H-21.2 Housekeeping

(a) A written work plan for housekeeping operations shall be established and implemented, with categorization of cleaning assignments as daily, weekly, monthly, or annually within each area of the facility.

(b) Procedures shall be developed for selection and use of housekeeping and cleaning products and equipment.

(c) Housekeeping personnel shall be trained in cleaning procedures, including the use, cleaning, and care of equipment.

8:43H-21.3 Patient care environment

(a) The following housekeeping, sanitation, and safety conditions shall be met:

1. The facility and its contents shall be free of dirt, debris, and insect and rodent harborages;

2. Nonskid wax shall be used on all waxed floors;

3. All rooms shall be ventilated to help prevent condensation, mold growth, and noxious odors;

4. All patient areas shall be free of noxious odors;

5. Throw rugs or scatter rugs shall not be used in the facility;

6. All furnishings shall be clean and in good repair, and mechanical equipment shall be in working order. Equipment shall be kept covered to protect from contamination and accessible for cleaning and inspection. Broken or worn items shall be repaired, replaced, or removed promptly;

7. All equipment shall have unobstructed space provided for operation;

8. All equipment and materials necessary for cleaning, disinfecting, and sterilizing shall be provided;

9. Thermometers which are accurate to within three degrees Fahrenheit shall be maintained in refrigerators, freezers, and storerooms used for perishable and other items subject to deterioration;

10. Pesticides shall be applied in accordance with N.J.A.C. 7:30;

11. Articles in storage shall be elevated from the floor and away from walls;

12. All poisonous and toxic materials shall be identified, labeled, and stored in a locked cabinet or room that is used for no other purpose;

13. Combustible materials shall not be stored in heater rooms or within 18 feet of any heater located in an open basement;

14. Paints, varnishes, lacquers, thinners, and all other flammable materials shall be stored in closed metal cabinets or containers;

15. Unobstructed aisles shall be provided in storage areas;

16. A program shall be maintained to keep rodents, insects, vermin, and birds out of the facility.

17. Toilet tissue, soap, and towels or air dryers shall be provided in each bathroom at all times;

18. Solid or liquid waste, garbage, and trash shall be stored or disposed of in accordance with the rules of the New Jersey State Department of Environmental Protection and the New Jersey State Department of Health. Solid waste shall be stored in insectproof, rodentproof, fireproof, nonabsorbent, watertight containers with tightfitting covers. Procedures and schedules shall be established and implemented for the cleaning of storage areas and containers for solid or liquid waste, garbage, and trash, in accordance with N.J.A.C. 8:24;

19. Draperies, upholstery, and other fabrics or decorations shall be fire-resistant and flameproof;

20. Wastebaskets and ashtrays shall be made of noncombustible materials;

21. Latex foam pillows shall be prohibited;

22. The temperature of the hot water used for showers, bathing and handwashing shall not exceed 110 degrees Fahrenheit (43 degrees Celsius); and

23. The temperature in the facility shall be kept at a minimum of 72 degrees Fahrenheit (22 degrees Celsius) during the day and at a minimum of 68 degrees Fahrenheit (20 degrees Celsius) at night. "Day" shall mean the time between sunrise and sunset.

8:43H-21.4 Linen and laundry services

(a) Written policies and procedures shall be established and implemented for linen and laundry services, including, but not limited to, policies and procedures regarding the following:

1. The storage, transportation and laundering of linen and personal laundry. Such policies shall not interfere with the patient's right to personal choice regarding dress;

2. The frequency of laundering linen and personal laundry;

3. The frequency of changing bed linen, towels, and washcloths;

4. Provision of a supply of linen, including at least sheets, pillow cases, blankets, drawsheets (or an alternative), towels, and washcloths, that is three times the licensed bed capacity, so that at least one set of clean linens remains available for each patient;

5. Collection of soiled linen and laundry so as to avoid microbial dissemination into the environment, and placement in impervious bags or containers that are closed at the site of collection. Separate containers shall be used for transporting clean linen and laundry and for transporting soiled linen and laundry;

6. Storage of soiled linen and laundry in a ventilated area separate from any other supplies. Soiled linen and laundry shall not be stored, sorted, rinsed, or laundered in patient rooms, bathrooms, areas of food preparation and/or storage, or areas in which clean linen, material, and/or equipment are stored; and

7. Protection of clean linen from contamination during processing, transporting, and storage.

SUBCHAPTER 22. QUALITY ASSURANCE PROGRAM

8:43H-22.1 Quality assurance plan

The facility shall establish and implement a written plan for a quality assurance program for patient care. The plan shall specify a timetable and the person(s) responsible for the quality assurance program and shall provide for ongoing monitoring of staff and patient care services.

8:43H-22.2 Quality assurance activities

(a) Quality assurance activities shall include, but not be limited to, the following:

1. At least annual review of staff and physician qualifications and credentials;
2. At least annual review of staff orientation and staff education;
3. Evaluation of patient care services, staffing, infection prevention and control, housekeeping, sanitation, safety, maintenance of physical plant and equipment, patient care statistics, and discharge planning services;
4. Evaluation by patients and their families of care and services provided by the facility;
5. Audit of patient medical records (including those of both active and discharged patients) on an ongoing basis to determine if care provided conforms to criteria established by each patient care service for the maintenance of quality of care; and
6. Establishment of a patient care outcome assessment system for evaluation of the patient care provided by each service, which includes criteria to be used for the determination of achievement of patient rehabilitation goals. The assessment of outcome shall examine the condition of the patient at the conclusion of care in relation to the goals of the patient's treatment.

8:43H-22.3 Measures for corrections and improvements

The results of the quality assurance program shall be submitted to the governing authority at least annually and shall include at least deficiencies found and recommendations for corrections or improvements. Deficiencies which jeopardize patient safety shall be reported to the governing authority immediately. The administrator shall, with the approval of the governing authority, implement measures to ensure that corrections or improvements are made.

SUBCHAPTER 23. (RESERVED)

SUBCHAPTER 24. (RESERVED)

HUMAN SERVICES**(a)****DIVISION OF DEVELOPMENTAL DISABILITIES****Determination of Eligibility****Withdrawal of Proposed New Rules: N.J.A.C. 10:46**

Take notice that the Division of Developmental Disabilities proposed rules concerning its eligibility criteria and procedures for determining eligibility. These proposed rules established criteria based upon N.J.S.A. 30:6D-23 et seq. Included in the rules were specific guidelines used in determining eligibility, application procedures, and a description of how a determination of eligibility is made and what notice procedures are required. The proposed new rules appeared in the August 15, 1988 New Jersey Register at 20 N.J.R. 2008(a).

A number of comments were received on the proposed rules from provider agencies as well as the Department of the Public Advocate, Division of Advocacy for the Developmentally Disabled. Most comments involved requests for clarification of the rules.

After considering the comments, the Division of Developmental Disabilities believes that significant revision of the rules is required to adequately describe the requirements. The rules will be repropoed to allow comments on the revised text. The Division of Developmental Disabilities has thus decided to withdraw the proposed rule N.J.A.C. 10:46.

(b)**DIVISION OF PUBLIC WELFARE****Public Assistance Manual****Realizing Economic Achievement Program (REACH):
Support Services; Post-AFDC Child Care****Proposed Amendments: N.J.A.C. 10:81-14.5 and
14.18**

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:10-1 et seq., especially 44:10-13.

Proposal Number: PRN 1989-210.

Submit comments by May 31, 1989 to:

Marion E. Reitz, Director
Division of Public Welfare
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments at N.J.A.C. 10:81-14.5 and 14.18 clarify the extent of REACH post-AFDC child care benefits in order to ensure that families of REACH participants who commence employment receive adequate support for child care expenses during the difficult first year transition from welfare dependency into full employment. This policy clarification will sustain the REACH participant's efforts toward self-sufficiency and prevent return to welfare reliance.

Prior to the proposed amendments, the impact of REACH policy concerning payment of post-employment child care (which permitted a REACH participant to receive 52 weeks of extended child care benefits from the onset of employment) has been less effective than originally planned. The impact was lessened because Aid to Families with Dependent Children (AFDC) earned income disregards (specifically, the disregard of one-third of earnings for the first four months of employment) allowed a significant number of participants moving into employment to remain on welfare for a four month period following the onset of their employment; thus, such participants were permitted to receive only eight months of extended child care benefits beyond their welfare dependency stage.

To remedy this situation and to ensure that REACH participants transitioning into economic self-sufficiency receive maximum support in achieving their goals, the proposed amendments clarify that post-employment child care benefits in the REACH program are to commence with the date of employment that results in ineligibility for AFDC and will coincide with the 12-month Medicaid extension period to the extent possible. This interpretation guarantees that all REACH participants moving into employment have the opportunity to receive the full 52 weeks of extended child care benefits.

Additionally, to conform with requirements of the Federal Family Support Act of 1988 (FSA), the maximum limits for child care disregards have been increased to \$175.00 per month per child for a child age two or older, and \$200.00 per month per child for a child under age two.

As a supplement to available support services, transitional child care benefits for working families are proposed at N.J.A.C. 10:81-14.18(d)4. Those benefits may be available after the 52 week post-AFDC child care period has expired, and are based on eligibility criteria developed by the Department of Human Services such as income, family size, and shelter costs, as well as being subject to availability of State funds. Those transitional child care benefits for working families are intended to assist working families whose circumstances are such that they would be unlikely to continue to meet their child care expenses without continued support and would, therefore, find themselves again on the welfare rolls.

Significant modifications included in the proposed amendments are:

Language was substituted at N.J.A.C. 10:81-14.5(a)3 to indicate that child care benefits shall be granted post-AFDC rather than post-employment.

At N.J.A.C. 10:81-14.18(d), language was added to clarify that REACH child care benefits shall be available to participants while they are employed and still eligible to receive a partial AFDC payment, and for one year commencing with employment which results in ineligibility for AFDC benefits.

N.J.A.C. 10:81-14.18(d)1 reiterates the fact that employment while receiving AFDC benefits does not count toward this one year period, and defines the one year post-AFDC period as 52 consecutive weeks.

Provisions at N.J.A.C. 10:81-14.18(d)2-4 have been deleted and rewritten.

The proposed amendment at N.J.A.C. 10:81-14.18(d)2 states that the post-employment period shall begin with the first week in which a participant is employed and receiving AFDC, and shall expire when the participant is either ineligible for AFDC for reason other than sanction or penalty, or is no longer employed. State REACH funds shall be used for the cost of post-employment child care in any month in which the cost of child care exceeds \$175.00 per month for any child age two or older, and \$200.00 for any child under age two, with exceptions to the standard payment rates allowed for special circumstances as indicated at N.J.A.C. 10:81-14.18(f)3.

The proposed amendment at N.J.A.C. 10:81-14.18(d)2i states that if an employed participant becomes ineligible for AFDC for a reason other than a sanction or noncompliance with AFDC program requirements, such a participant shall be eligible for REACH child care payments for a period of one year post-AFDC while the participant is employed, subject to the provisions at N.J.A.C. 10:81-14.18(d)3.

Concerning post-AFDC child care, the proposed amendment at N.J.A.C. 10:81-14.18(d)3 states that the one year post-AFDC period shall coincide with the 12-month period of extended Medicaid benefits at N.J.A.C. 10:81-14.20(d) to the extent possible. That one year period shall begin with the month in which AFDC is terminated due to income from employment, but no later than the payment month corresponding to the budget month in which the family becomes ineligible due to earnings from employment. If the family fails to report the earnings causing ineligibility, the one year period shall begin with the first month in which the family became ineligible for AFDC. State REACH funds shall be used for the cost of post-AFDC child care.

Language at N.J.A.C. 10:81-14.18(d)3i clarifies that only those weeks during which the participant is employed and not receiving AFDC shall be counted toward the one year post-AFDC period. Further, employment shall be presumed unless the participant reports otherwise.

Further clarification is provided at N.J.A.C. 10:81-14.18(d)3ii by stating that the one year post-AFDC period shall consist of 52 consecutive weeks if the participant remains employed and does not receive AFDC during that year. If an employed participant loses employment and begins receiving AFDC during the one year post-AFDC period, payment of child care for the subsequent post-AFDC period shall be available for the number of weeks remaining in the one year post-AFDC period.

Concerning eligibility for post-AFDC child care, language at N.J.A.C. 10:81-14.18(d)3iii(1) to (3) states that before AFDC is terminated, the case manager shall evaluate the need for post-AFDC child care. In addition to demonstrating need, in order to be eligible for post-AFDC child care, the participant shall sign a REACH Agreement covering the period during which the child care is to be provided, participate in post-AFDC activities set forth in the Agreement, and comply with REACH program requirements to report participation in post-AFDC activities.

Further, language has been added at N.J.A.C. 10:81-14.18(d)4 providing for transitional support services for working families. Payment for additional child care after the one year post-AFDC period may be available from the REACH program as transitional support services for working families, subject to availability of State funds. Duration of payment and eligibility for transitional support services shall be based on criteria established by the Department of Human Services and may include mandatory verification of income, size of household or family, shelter costs and similar factors.

Language at N.J.A.C. 10:81-14.18(d)5iv, which states that child care payments shall not be extended beyond the 52-week post-employment period, has been deleted.

Specifications at N.J.A.C. 10:81-14.18(f)4 concerning maximum child care payment amounts to be disregarded from the earnings of an employed AFDC recipient before that income is used to compute the monthly AFDC grant, as required by the Social Security Act, have been revised. The actual cost of child care up to and including \$175.00 per month per child age two or older, and \$200.00 per month per child under age two shall be disregarded. An employed participant, therefore, shall pay the first \$175.00 or \$200.00 in child care directly to the provider. Child care costs in excess of the specified amounts shall be considered a REACH post-employment child care payment to be issued as a vendor payment to the provider or as a direct payment to the participant in accordance with the provisions concerning voucher payments and volun-

tary restricted payments at N.J.A.C. 10:81-14.18(f)1 and 2. Any amount in excess of the specified amounts that is paid directly to the participant is income to the AFDC family and shall be used to compute the AFDC grant.

The term "post-AFDC" has been substituted for "post-employment" at N.J.A.C. 10:81-14.18(g)1 to conform with the clarification provided throughout the proposed amendments.

Social Impact

The proposed amendments will have a positive social impact on REACH participants by eliminating discrimination against REACH participants who obtain employment, and those earning lower wages; such unequal treatment results from application of the earned income disregards under current rules.

Under current rules, the impact of those disregards is such that the average three-person AFDC family (with one child needing full-time care) which earns \$4.90 or more per hour becomes ineligible for AFDC and receives fully State-funded REACH child care for 12 months. In contrast, the same family earning \$4.30 to \$4.90 per hour remains eligible for AFDC for four more months, but must pay \$160.00 (\$175.00 or \$200.00 under these amendments) per month per child toward the cost of child care with any excess paid by REACH. When the disregard expires in the fifth month and the family becomes ineligible for AFDC, they receive fully State-funded REACH child care for only eight months (the time remaining in their "12-month post-employment" period). Under current rules, the impact of the application of earned income disregards lessens the support originally intended to be provided by extended child care benefits.

The proposed amendments prevent unequal treatment and specify the original intent of the rules by redefining the post-employment period as commencing with the date of employment which results in ineligibility for AFDC, thus enabling a REACH participant transitioning into employment to receive the full 52 weeks of extended child care benefits. This policy clarification eases the participant's period of transition, prevents a return to welfare dependency, and corresponds with the provisions of the Family Support Act of 1988, which allow payment for 12 months of child care post-AFDC. Both REACH participants and New Jersey taxpayers will benefit significantly from these proposed amendments which maximize support services to assist individuals and families in their goal of moving away from welfare and toward economic self-sufficiency.

Economic Impact

Approximately \$12 million has been proposed for REACH post-AFDC child care costs in the budget for State Fiscal Year 1990. It is anticipated that beginning in April, 1990, New Jersey will be able to obtain Federal Financial Participation for post-AFDC child care costs since, by that date, this State will have implemented the requirements of the Family Support Act of 1988 concerning child care payments.

For the State Fiscal Year 1990 budget, \$3.4 million has been proposed for transitional child care benefits for working families as delineated at N.J.A.C. 10:81-14.18(d)4. Those benefits may be available after the 52 week post-AFDC child care period has expired, and are based on eligibility criteria developed by the Department of Human Services such as income, family size, and shelter costs, as well as being subject to availability of State funds. Those transitional child care benefits for working families are intended to assist working families whose circumstances are such that they would be unlikely to continue to meet their child care expenses without continued support and would, therefore, find themselves again on the welfare rolls. Those transitional child care benefits are thus aimed at preserving the family's economic self-sufficiency and preventing a return to welfare dependency which would, in the long run, be detrimental to the family's well-being and more costly to New Jersey's taxpayers.

In implementing these proposed amendments, every effort will be made to maximize the use of available Federal funds.

Regulatory Flexibility Statement

This rule 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 inasmuch as the rules govern a public assistance program designed to certify eligibility for Aid to Families with Dependent Children program 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]):

10:81-14.5 REACH Agreement

(a) Purpose and scope: The REACH Agreement will set forth provisions for both the REACH participant and the agency to comply with under the principle of mutual obligation. Each REACH participant will sign a REACH Agreement with the case manager affirming participation, provision of support services (such as child care and transportation) and commitment to self-sufficiency. The REACH Agreement will be tailored to each participant's skills and necessary employment activities. A Spanish language version of the REACH Agreement is available for any participant whose primary language is Spanish.

1.-2. (No change.)

3. Post-AFDC REACH participants: All REACH participants no longer receiving AFDC will be required to complete and sign a REACH Agreement as a condition of receiving [post-employment] **post-AFDC** child care. All REACH participants receiving post-AFDC Medicaid (see N.J.A.C. 10:81-14.20)[,] should complete and sign a REACH Agreement. Exceptions may be granted where the participant would be penalized by the employer for taking time off from work. Absence of a REACH Agreement will not relieve the participant of complying with eligibility requirements for extended Medicaid benefits (see N.J.A.C. 10:81-14.20).

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

10:81-14.18 REACH support services: child care

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

(d) Duration of payment: REACH child care benefits are routinely available to participants for one year of participation in a REACH employment-directed activity [and for one year post employment], **for the post-employment period after the commencement of employment that does not result in ineligibility for AFDC, that is, while a participant is employed and receiving AFDC, to supplement as necessary child care paid by the participant as required by the Social Security Act (see (f)4 below), and one year post-AFDC after the commencement of employment that results in ineligibility for AFDC.** [One year is defined as 52 consecutive weeks.]

1. The one year period of participation in a REACH employment-directed activity will start with the first week in which an individual participates in any employment-directed activity set forth at N.J.A.C. 10:81-14.2. Participation in orientation, individual evaluation [and] , assessment **and employment while receiving AFDC** do not count toward this one year period. **One year is defined as 52 consecutive weeks.**

2. The one year post-employment period will start with the first week in which a participant is employed. For employed participants receiving AFDC, State REACH funds will be used for any month in which the cost of child care exceeds \$160.00 for any child (see (g)3 below). For employed participants no longer receiving AFDC, State REACH funds will be used for the entire cost of child care.

3. If an employed participant becomes ineligible for AFDC for a reason other than employment, payment of child care through the REACH program will continue for the number of weeks remaining in the 52-week period that the participant is employed.

4. Post-assistance child care: Eligibility for payment of child care through the REACH program will continue after a participant becomes ineligible for AFDC due to income from employment. Payment for child care will continue if needed for the number of weeks remaining in the 52-week period. Before AFDC is terminated, the case manager will evaluate the need for post-assistance child care.

i. Additional eligibility requirements: In addition to demonstrating need, in order to be eligible for post-assistance child care the participant must:

(1) Sign a REACH Agreement covering the period the child care is to be provided;

(2) Participate in post-AFDC activities set forth in the Agreement; and

(3) Comply with REACH program requirements to report participation in post-AFDC activities.

ii. If an employed participant loses employment and returns to the assistance rolls within the one year post-employment period, payment

of child care through the REACH program will continue for the weeks remaining in the 52-week period.]

2. Post-employment child care: The post-employment period shall start with the first week in which a participant is employed and receiving AFDC and shall expire when the participant is either ineligible for AFDC for reason other than sanction or penalty or is no longer employed. State REACH funds shall be used for the cost of post-employment child care in any month in which the cost of child care exceeds \$175.00 for any child age two or older and \$200.00 for any child under age two (see (f)3 below).

i. If an employed participant becomes ineligible for AFDC for a reason other than a sanction or similar penalty for noncompliance with AFDC program requirements, the participant shall be eligible for payment of child care through the REACH program for the one year post-AFDC period while the participant is employed, subject to (f)3 below.

3. Post-AFDC child care: The one year Post-AFDC period shall coincide with the 12 month period of extended Medicaid benefits at N.J.A.C. 10:81-14.20(d) to the extent possible. The one year period shall begin with the month AFDC is terminated due to income from employment, but no later than the payment month corresponding to the budget month in which the family becomes ineligible due to earnings from employment. If the family fails to report the earnings causing ineligibility, the one year period shall begin with the first month in which the family became ineligible for AFDC. State REACH funds shall be used for the cost of post-AFDC child care.

i. Only weeks during which the participant is employed and not receiving AFDC shall be counted toward the one year post-AFDC period. Employment shall be presumed unless the participant reports otherwise.

ii. The one year post-AFDC period shall consist of 52 consecutive weeks if the participant remains employed and does not receive AFDC during that year. If an employed participant loses employment and begins receiving AFDC during the one year post-AFDC period, payment of child care for the subsequent post-AFDC period shall be available for the number of weeks remaining in the one year post-AFDC period.

iii. Eligibility for post-AFDC child care: Before AFDC is terminated, the case manager shall evaluate the need for post-AFDC child care. In addition to demonstrating need, in order to be eligible for post-AFDC child care the participant must:

(1) Sign a REACH Agreement covering the period during which the child care is to be provided;

(2) Participate in post-AFDC activities set forth in the Agreement; and

(3) Comply with REACH program requirements to report participation in post-AFDC activities.

4. Transitional support services for working families: Payment for child care after the one year post-AFDC period may be available from the REACH program, as transitional support services for working families, subject to availability of State funds. Duration of payment and eligibility for transitional support services shall be based on criteria established by the Department of Human Services, and may include mandatory verification of income, size of household or family, shelter costs and similar factors.

5. Exceptions and waiver: Exceptions to the one year limit on REACH child care payments for participation in a REACH employment-directed activity may be allowed in exceptional circumstances and must be approved through waiver procedures determined by the Department of Human Services.

i.-iii. (No change.)

[iv. Child care payments shall not be extended beyond the 52-week post employment period.]

(e) (No change.)

(f) Payment methods: The two methods in the REACH program for issuing payments for child care are vendor payments to the provider and direct payments to the participant.

1.-3. (No change.)

4. Special requirements for employed participants: The Social Security Act requires that for any employed AFDC recipient, the actual cost of child care up to and including [\$160.00 per month per child] \$175.00 per month per child age two or older and \$200.00 per month per child under age two shall be disregarded from the participant's

earnings, before that income is used to compute the monthly AFDC grant. Therefore, an employed participant shall pay the first [\$160.00] \$175.00 or \$200.00 in child care directly to the provider. The [balance of the REACH payment for child care provided will] amount in excess of \$175.00 or \$200.00 shall be considered a REACH post-employment child care payment to be issued as a vendor payment to the provider or as a direct payment to the participant, in accordance with (f)1 and 2 above. However, any amount in excess of [\$160.00] \$175.00 or \$200.00 per month per child that is paid directly to the participant's income to the AFDC family and shall be used to compute the AFDC grant.

i.-ii. (No change.)

(g) Case manager responsibilities: The case manager shall be responsible for assessing and determining the need for child care and authorizing issuance of REACH child care payments. Since the REACH program will be the payor of last resort, before payments may be issued, a REACH participant shall be required to certify that no other acceptable family members or other resources for child care that are in the best interest of the child are available. The case manager shall document this certification in the REACH case record. The welfare of the children and the quality of their care shall be considered.

1. Before the one year period of [post-employment] post-AFDC child care expires, the case manager shall advise the participant, the provider and the lead child care entity of the expiration date of REACH child care payments and that the participant shall be responsible for payment of the entire cost of child care. The case manager, with the assistance of the lead child care entity, will work with the participant to ease the transition to payment of child care not subsidized by REACH.

(h)-(i) (No change.)

LABOR

(a)

**DIVISION OF WORKPLACE STANDARDS
Safety and Health Standards for Public Employees
Air Contaminant Exposure Limits
Proposed Amendments: N.J.A.C. 12:100-4.2.**

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 31:1A-3(e), 34:6A-25 et seq., specifically 34:6A-30.

Proposal Number: PRN 1989-167.

Submit comments by May 31, 1989 to:

Alfred B. Vuocolo, Jr.
Chief Legal Officer
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

The Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., requires the Department of Labor to establish health and safety standards for public employees.

On November 5, 1984, rules were promulgated by the Commissioner which adopted the Federal Occupational Safety and Health Administration (OSHA) standards by reference in N.J.A.C. 12:100, Safety and Health Standards for Public Employees.

On Friday, January 13, 1989, the Federal Occupational Safety and Health Administration issued a final rule on air contaminants.

This final rule on Permissible Exposure Limits (PELs) for Airborne Toxic and Hazardous Substances was published in the Federal Register on January 19, 1989. The Federal rule will become effective on March 1, 1989.

The agency followed all regulatory procedures required by Federal laws and court decisions, including public hearings and risk assessment and

feasibility analyses. The final standard includes detailed discussions of the factors behind decisions on all the various chemicals and substances involved.

OSHA has utilized the National Institute for Occupational Safety and Health Recommended Exposure Limits (NIOSH-RELs) and the American Conference of Governmental Industrial Hygienists-Threshold Limit Values (ACGIH-TLV) published in 1987-88, as the starting points in the development of this new standard.

OSHA has reviewed health evidence for all these substances and has determined that the new limits substantially reduce a risk of deleterious health effects among American workers, including cancers, central and peripheral neuropathies, lung disease, liver and kidney damage and other systemic effects. The health evidence forms a reasonable basis for proposing revisions to these levels. OSHA has established new levels which it has determined will substantially reduce significant risks. It has also concluded that the new limits are feasible.

The rule amends the existing standard 1910.1000. It sets PELs for 164 substances not previously regulated by OSHA, adopts more protective PELs for 212 substances which had been regulated at levels based on 1968 scientific data, and reaffirms the existing PELs for 52 substances. In addition, PELs are continued at existing levels for 169 substances not considered in the rulemaking. The changes also include inclusion of Short Term Exposure Limits to complement eight-hour time Weighted Average Limits, establishment of skin designation, and the addition of ceiling limits as appropriate.

The standard 29 CFR Part 1910.1000, Air Contaminants, addresses occupational exposure to airborne toxic and hazardous substances. The section consists of paragraphs, tables and appendices as follows:

- (a) Scope and Application, including definitions applicable to Table Z-1-A.
- (b) Description of Table Z-2
- (c) Description of Table Z-3
- (d) Computation of Formulae
- (e) Methods of Compliance
- (f) Dates, including transitional provisions
- (g) Table Z-1-A
Table Z-2
Table Z-3
Appendix A—Sampling and Analytical Methods

The revised PELs are included in a single new Table Z-1-A, which also includes the existing OSHA PELs under the Transitional Limits Columns. Tables Z-2 and Z-3 are retained since they list limits which are not conveniently adaptable to the format used in Table Z-1-A. Included in these three tables are 24 substances for which comprehensive OSHA standards exist and nine substances for which OSHA standards development is in active process.

Employers are required to be in compliance with the new limits by September, 1989, using any combination of engineering controls, work practices, and personal protective equipment to meet the compliance deadline. The start-up date for compliance with preference for feasible engineering controls is December 31, 1992.

N.J.S.A. 34:6A-30 states, in part:

"... the Commissioner shall provide, at the minimum, for the adoption of all applicable occupational health and safety standards, amendments or changes adopted or recognized by the Secretary under the authority of the Occupational Safety and Health Act of 1970."

The final Federal rule is an amendment as described above and is the rule which the Division of Workplace Standards of the Department of Labor proposes to adopt into the State rules reference. This new Federal rule, 29 CFR Part 1910.1000, Air Contaminants, can be postponed for adoption by reference by amending N.J.A.C. 12:100-4.2(a).

It should be noted that paragraph (f) of 29 CFR Part 1910.1000 addresses an effective date and start up dates. These dates represent implementation dates set by the United States Department of Labor for the protection of employees in the private sector by private employers. The effective date of the proposed amendments will be the date of publication of the adoption. The operative date will be 180 days after the effective date. All other implementation or transitional dates will be as provided in 29 CFR Part 1910.1000.

Social Impact

This proposed amendment will protect the health, safety and welfare of public employees handling or exposed to hazardous substances which are listed in Tables Z-1, Z-2, and Z-3. There exists sufficient documented

scientific information that exposure at concentrations above the permissible exposure limits is associated with occupational disease and ill-health symptoms.

Implementation of this amendment will reduce illness occurring among public employees. The proposed amendment will improve working conditions, reduce time lost caused by exposure to these hazardous substances, and it will enhance the welfare and morale of public employees affected.

Economic Impact

Compliance with this amendment may impose some increased costs on public employers. These may be incremental costs incurred due to the more protective PELs; additional costs may also be incurred by complying with requirements for those additional materials now present in the amended standard. OSHA has made a comprehensive compilation and survey of such increased costs on an industry-by-industry basis. Such specific costs figures are difficult to ascribe to the public sector, wherein the incidence of the hazardous contaminants is less than in the various source manufacturing industries. It is reasonable to anticipate that the cost of compliance in the public sector will be significantly less than those costs projected by OSHA for the various categories in the private sector. Any costs incurred in complying with the proposed amendment will be outweighed by the greater public protection achieved.

Regulatory Flexibility Statement

The proposed amendment does not impose any additional recordkeeping, reporting and compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as only public employers will be affected by the proposed amendments. Therefore, a regulatory flexibility analysis is not required.

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

12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1910, General Industry Standards with all amendments published in the Federal Register through [September 29, 1988] **January 19, 1989** with certain exceptions noted in (b) and (c) below, are adopted as occupational safety and health standards and shall include:

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

(a)

DIVISION OF WORKPLACE STANDARDS

Safety and Health Standards for Public Employees Standards for Fire Fighters

Proposed Amendments: N.J.A.C. 12:100-4.2 and 12:100-17

Proposed New Rules: N.J.A.C. 12:100-10

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:20-1, 34:1A-3(e); and 34:6A-25 et seq., specifically 34:6A-30, 31 and 32.

Proposal Number: PRN 1989-209.

Submit comments by May 31, 1989 to:
Alfred B. Vuocolo, Jr.
Chief Legal Officer
Office of the Commissioner
New Jersey Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

The New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., was enacted on January 17, 1984, to ensure that all public employees are provided with a safe and healthful workplace free from recognized hazards.

On November 5, 1984, the Department of Labor adopted by reference the Federal Occupational Safety and Health Standards at 16 N.J.R. 3051(a), which included the general industry standards, construction standards and agricultural standards.

Among the General Industry Standards adopted in N.J.A.C. 12:100-4 was Subpart L, Fire Protection of 29 CFR Part 1910. Section 1910.156 at Subpart L addresses requirements for personal protective clothing, personal equipment, and respiratory protection devices for fire fighters. In 1980, the New Jersey Department of Health undertook a major study of the hazards of fire fighters in the State. The subsequent report, "Fire Fighting in New Jersey: Hazards and Methods of Control," included recommendations which incorporated and, in some cases, went beyond the Federal Occupational Safety and Health Administration (OSHA) standards.

In June of 1987, an amendment to N.J.A.C. 12:100-4.2(a)9 was adopted (see 19 N.J.R. 1098(a)) which established that personal protective clothing ordered or purchased after November 6, 1986 had to comply with the OSHA standards. Further, this amendment established that after November 6, 1988, the employer had to assure that all fire fighters wear the personal protective clothing as provided by the OSHA standards.

At the present time, there is renewed interest in upgrading the standards for fire fighters. The Department of Labor does not want to impose an undue burden upon the employer, but does want to ensure that the best protection for the fire fighters is made available.

The Department of Labor, in consultation with the Department of Health, the Department of Community Affairs and with the advice and consent of the Public Employees Occupational Safety and Health Advisory Board, is proposing to adopt by reference these amendments to replace the outdated OSHA Standards 1910.156 of Subpart L of 29 CFR 1910 covering protective clothing, personal equipment and respiratory protection devices for fire fighters.

These proposed amendments are derived, for the most part, from current standards of the National Fire Protection Association (NFPA) and are more stringent than current Federal OSHA standards. The NFPA standards from which these rules were derived have been adopted as American National Standards by the American National Standards Institute.

The proposed amendments include the following standards:

1. NFPA No. 1971, Standard on Protective Clothing for Structural Fire Fighting, which was used in formation of the OSHA Fire Protection Standard for the turnout coats and bunker pants and is more protective than the current OSHA standard;
2. NFPA No. 1973, Standard on Gloves for Structural Fire Fighters, which was published after the promulgation of the OSHA Fire Protection Standards and contains improved performance requirements for sizing, dexterity, and resistance to water penetration;
3. NFPA No. 1972, Standard on Structural Fire Fighters' Helmets. This standard is more stringent than the OSHA standard because it requires the helmet to pass a higher radiant heat load impact test. Incidents have been documented throughout the country where helmets meeting OSHA standards have been unable to withstand exposure to heat conditions encountered by fire fighters performing interior structural fire fighting;
4. NFPA No. 1974, Standard on Protective Footwear for Structural Fire Fighting, is the first edition of this standard, was published in 1987, and has been approved by the American National Standards Institute;
5. NFPA No. 1975, Standard on Station/Work Uniforms for Fire Fighters, the purpose of which is to provide a fire fighter with a station/work uniform which, when worn under protective clothing, will not contribute to fire fighter injury and will not cause any degradation of the performance features of the fire fighter protective clothing;
6. NFPA No. 1981, Standard on Self Contained Breathing Apparatus. The purpose of this standard is to provide standard requirements for the use of specific types of self-contained breathing apparatus for fire fighters exposed to hazardous atmospheres;
7. NFPA No. 1982, Standard on Personal Alert Safety Systems (PASS) for Fire Fighters. This standard is designed to provide personal alert safety systems worn by fire fighters that will emit an audible alarm signal to summon aid in the event the fire fighter becomes incapacitated or needs assistance;
8. NFPA No. 1983, Standard on Fire Service Life Safety Rope, Harnesses, and Hardware. The purpose of this standard is to provide a reasonable degree of safety for life safety rope, harnesses and hardware used to support fire services personnel and civilians during rescue, fire fighting, and other emergency operations, or during training evolutions; and
9. ANSI Z88.5-1981, Practices for Respiratory Protection for the Fire Service. This standard references updated relevant standards, is more complete than the OSHA standard, describes how to achieve

he objectives of a respiratory protection program, and mandates the use of self-contained breathing apparatus during overhaul.

The proposed amendment to N.J.A.C. 12:100-4.2 adopts by reference the General Industry Standards relating to fire protection, with certain changes.

The proposed new subchapter at N.J.A.C. 12:100-10 sets forth safety standards for firefighters.

N.J.A.C. 12:100-10.1 sets forth the scope of the subchapter, and N.J.A.C. 12:100-10.2 is a definitions section.

N.J.A.C. 12:100-10.3 provides that each employer shall have a policy which contains the organizational structure of the fire service, its number of members and its functions.

N.J.A.C. 12:100-10.4 sets forth conditions which must be met by prospective employees.

N.J.A.C. 12:100-10.5 states that the employer must provide to employees protective clothing at no cost to the employee.

N.J.A.C. 12:100-6 addresses the requirements for foot and leg protection, N.J.A.C. 12:100-10.7 addresses body protection, N.J.A.C. 12:100-10.8 addresses hand protection, and N.J.A.C. 12:100-10.9 concerns head, eye and face protection.

N.J.A.C. 12:100-10.10 requires employers to provide, at no cost to employees, respiratory protection devices. The section discusses the various forms of apparatus that are acceptable, and states the conditions under which such apparatus should be used.

N.J.A.C. 12:100-10.11 provides that employers must furnish necessary life safety rope, harnesses and hardware to employees.

N.J.A.C. 12:100-10.12 requires employers to provide employees with a personal alert safety system.

N.J.A.C. 12:100-10.13 addresses the requirements for hearing protection.

N.J.A.C. 12:100-10.14 addresses the procedure for filling air cylinders.

N.J.A.C. 12:100-10.15 sets forth guidelines for fire apparatus operations.

N.J.A.C. 12:100-10.16 sets forth the inspection schedule for maintenance of fire fighter equipment.

The proposed amendments to subchapter N.J.A.C. 12:100-17 update the list of standards and publications referred to in the chapter.

Social Impact

In comparison with other occupations, fire fighting is one of the most hazardous occupations, since fire fighting fatalities, injury and illness rates are very high. It is important to outfit fire fighters with proper personal protective clothing, personal equipment and respiratory protection devices. Their health, effectiveness and safety depend on it. If one expects fire fighters to risk their lives to save the public, the public must make a commitment to provide them with the best possible protection equipment available. Implementation of these proposed new rules will reduce deaths, injuries and illness to fire fighters. The proposed new rules will also help fire fighters perform their jobs more effectively, thereby reducing injury to the public.

Economic Impact

The proposed new rules will have a negative economic impact on employers, as they will have to provide proper protective clothing, personal equipment and respiratory protection devices. However, the substantial decrease in deaths, injuries and illnesses of fire fighters will far outweigh the cost of implementation of these proposed rules. Promulgation of the new rules will result in less lost time, better maintenance of work schedules because of fewer interruptions, decreased medical expenses, and decreased worker compensation, disability, and social security expenses. Additionally, by providing fire fighters with this equipment, some individuals who therefore could not afford to become fire fighters may now be able to contribute their valuable services to the community.

Regulatory Flexibility Statement

The proposed amendment does not place any additional reporting, recordkeeping or compliance requirements on small businesses, pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et

seq., as only public employers in the State of New Jersey will be affected by the proposed amendments. Therefore, a regulatory flexibility analysis is not required.

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

12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1910, General Industry Standards with the amendments published in the Federal Register through September 29, 1988, with certain exceptions noted in (b) and (c) below, are adopted as occupational safety and health standards for the protection of public employees engaged in general operations and shall include:

1.-9. (No change.)

10. Subpart L—Fire Protection except that:

[i. 29 CFR Part 1910.156(e)(1)(i) is amended to read: The employer shall assure that protective clothing ordered or purchased after November 6, 1986, complies with paragraph (e). As the new protective clothing is provided, the employer shall assure that all fire brigade members wear the protective clothing when performing interior structural fire fighting. After November 6, 1988, the employer shall assure that all fire brigade members wear protective clothing meeting the requirements of paragraph (e) when performing interior structural fire fighting. All personal protective clothing required to be provided to members of a fire brigade pursuant to paragraph (e) shall be provided at no cost to the employee.]

i. Paragraph 1910.155(a) and Section 1910.156 are not adopted; and

ii. Paragraph 1910.155(a) is revised to read:

(a) Scope. This subpart contains requirements for all portable and fixed fire suppression equipment, fire detection systems, and fire or employee alarm systems installed to meet the fire protection requirements of 29 CFR Part 1910.

11.-19. (No change.)

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

SUBCHAPTER 10. STANDARDS FOR FIREFIGHTERS

12:100-10.1 Scope

(a) This subchapter shall apply to the following:

1. Standards for personal protective equipment, respiratory protective equipment and other requirements for the fire service; and
2. All public employments, except as provided in (b) below.

(b) This subchapter shall not be applicable to:

1. Construction, agriculture and maritime employment;
2. Airport crash rescue; or
3. Forest firefighting operations.

12:100-10.2 Definitions

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

“ANSI” means American National Standards Institute.

“Approved” means the term as defined at N.J.A.C. 12:100-2.1.

“Buddy-breathing device” means an accessory to self-contained breathing apparatus which permits a second employee to share the same air supply as that of the wearer of the apparatus.

“Education” means the process of imparting knowledge or skill through systematic instruction.

“Employee” means the term as defined at N.J.A.C. 12:100-2.1.

“Employer” means the term as defined at N.J.A.C. 12:100-2.1.

“Enclosed structure” means a structure with a roof or ceiling and at least two adjacent walls which may present fire hazards to employees.

“Fire brigade” means an organized group of firefighters who are public employees and who may be assigned to other duties but who have an obligation to fight fires.

“Fire department” means an organized group of employees organized by a public employer where the employees are knowledgeable, trained and skilled in at least basic firefighting operations.

“Firefighter” means a member of the fire service who engages in the physical activity of rescue, fire suppression or both at fires in buildings, enclosed structures, vehicles, vessels or like properties that are involved in a fire or emergency situation.

"Fire service" means a fire department or fire brigade.

"Helmet" means a device consisting essentially of a shell, an energy absorbing system, a retention system, fluorescent retroreflective markings, ear covers and face shield.

"Interior structural firefighting" means the physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage.

"NFPA" means the National Fire Protection Association.

"Overhaul" means:

1. The final control of a fire with suppression of the main body of the fire and other pockets of fire, searching for victims and salvage operation; or

2. The clean up stage following the elimination of an emergency, where fire was not involved.

"Positive-pressure apparatus" means an open- or closed-circuit apparatus in which the pressure inside the face piece in relation to the immediate environment is positive during both inhalation and exhalation.

"Quick disconnect valve" means a hand-operated device which provides a means for connecting and disconnecting the air cylinder to the self contained breathing apparatus.

"Respiratory protective device" means a breathing device designed to protect the wearer from an oxygen-deficient or hazardous atmosphere.

"Self contained breathing apparatus" means a portable device that includes the supply of respirable breathing gas for the firefighter.

"Service life" means the period of time that a respirator has been rated to provide protection to the wearer.

"Vapor barrier" means that material used to prevent or substantially inhibit the transfer of water, corrosive liquids and steam or other hot vapors from the outside of a garment to the wearer's body.

12:100-10.3 Organization

(a) The employer shall prepare and maintain a statement or written policy which contains the following:

1. The basic organizational structure;
2. The expected number of members in the fire service; and
3. The functions that the fire service is to perform.

(b) The organizational statement shall be available for inspection by the Commissioner and by employees or their designated representatives.

12:100-10.4 Personnel

(a) The employer shall assure that employees who are expected to do interior structural firefighting are physically capable of performing duties which may be assigned to them during emergencies.

(b) The employer shall not permit employees with known heart disease, epilepsy or emphysema to participate in firefighting or emergency activities unless a physician's certificate of the fitness of the employee to participate in such activities is provided.

12:100-10.5 Protective clothing

(a) The employer shall provide, at no cost to the employee, and assure the use of protective clothing which complies with this subchapter.

(b) Firefighters performing interior structural firefighting and overhaul shall be provided with the equipment covered in this subchapter.

(c) The employer shall assure that:

1. Protective clothing protects the head, body, and extremities, and consists of at least the following components: body protection, and eye, face and head protection;
2. Protective clothing ordered or purchased after the effective date of this subchapter shall comply with this subchapter; and
3. All firefighters wear protective clothing complying with this subchapter within five years after the effective date of this subchapter.

12:100-10.6 Foot and leg protection

(a) Foot and leg protection shall comply with this section, and may be achieved by:

1. Fully extended boots which provide protection for the legs; or
 2. Protective shoes or boots worn in combination with protective trousers that comply with the requirements of N.J.A.C. 12:100-10.7.
- (b) The protective footwear shall comply with NFPA 1974, 1987, Protective Footwear for Structural Fire Fighting.

(c) The performance, testing and construction of protective footwear shall be at least equivalent to NFPA 1974, 1987.

12:100-10.7 Body protection

(a) Body protection shall be coordinated with foot and leg protection to ensure full body protection for the wearer. This shall be achieved by one of the following methods:

1. Wearing of a fire-resistive coat to comply with (b) below in combination with a station/work uniform complying with (c) below, and fully extended boots complying with N.J.A.C. 12:100-10.6(b) and (c); or

2. Wearing of a fire-resistive coat in combination with protective trousers, both of which comply with (b) below.

(b) The performance, construction, and testing of fire-resistive coats and protective trousers shall be at least equivalent to NFPA No. 1971-1986, Protective Clothing for Structural Fire Fighting.

(c) The performance, construction and testing of station/work uniforms shall be at least equivalent to NFPA No. 1975-1985, Station/Work Uniforms of Fire Fighters.

12:100-10.8 Hand protection

(a) Hand protection shall consist of protective gloves or a glove system which will provide protection against cut, puncture, and heat penetration.

(b) The performance, construction and testing of gloves for structural firefighters shall be at least equivalent to NFPA No. 1973-1987, Gloves for Fire Fighters.

12:100-10.9 Head, eye and face protection

(a) Head protection shall consist of a protective head device with ear flaps and chin strap which meet the performance, construction, and testing requirements of NFPA No. 1972-1987, Structural Fire Fighter's Helmets.

(b) Full facepieces, helmets, or hoods or breathing apparatus which comply with 29 CFR 1910.134 and N.J.A.C. 12:100-10.10 shall be deemed to comply with (a) above.

12:100-10.10 Respiratory protection devices

(a) The employer shall provide, at no cost to the employee, and shall assure the use of respirators which comply with this section.

(b) The employer shall assure that respiratory protective devices worn by firefighters comply with sections 1 through 3 and 5 through 11 and Appendices A through F of ANSI Z88.5-1981, Practice for Respiratory Protection for the Fire Service, and with NFPA 1981-1986 "Self-contained Breathing Apparatus for Fire Fighters."

(c) The employer shall assure that all firefighters wear respiratory protective devices complying with this section and that such respirators are certified in accordance with 30 CFR Part 11, Respirators.

(d) Approved self-contained breathing apparatus with a full-facepiece, or with approved helmet or hood configuration, shall be provided to and worn by firefighters as follows:

1. While engaged in interior structural firefighting;
2. While working in confined spaces where toxic products of combustion or an oxygen deficiency may be present;
3. During emergency situations involving toxic substances; and
4. During all phases of firefighting and overhaul.

(e) Approved self-contained breathing apparatus may be equipped with either a "buddy-breathing" device or a quick disconnect valve, if it is approved by the manufacturer. If these accessories are used, they shall not cause damage to the apparatus or restrict the air flow of the apparatus, or obstruct the normal operation of the apparatus.

(f) Approved self-contained compressed air breathing apparatus may be used with approved cylinders from other approved self-contained compressed air breathing apparatus provided that such cylinders are of the same capacity and pressure rating. All compressed air cylinders used with self-contained breathing apparatus shall meet the criteria of 49 CFR Parts 100 through 199 and 30 CFR Parts 11, 12, 13, 14 and 14a.

(g) Self-contained breathing apparatus shall have a minimum service life rating of 30 minutes in accordance with the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health, except for escape self-contained breathing apparatus used only for emergency escape purposes.

(h) The employer shall have a written plan to assure that there are sufficient quantities of compressed air available to refill self-contained eathing apparatus tanks for all emergencies.

(i) Self-contained breathing apparatus shall be provided with an end service time indicator which automatically warns the user when the remaining service time of the apparatus is reduced to a range of 20 to 25 percent of its rated service time.

(j) Only pressure-demand or other positive-pressure self-contained eathing apparatus shall be worn by firefighters except as provided in (m) below.

(k) This section shall not prohibit the use of a self-contained breathing apparatus where the apparatus can be switched from a demand to positive-pressure mode. However, such apparatus shall be in the positive-pressure mode when firefighters are performing interior structural firefighting operations or overhaul.

(l) Self-contained breathing apparatus regulators shall be subject to overhaul and recalibration at least every two years or when damaged. Each overhaul shall be performed by the manufacturer or by personnel trained and certified by the self-contained breathing apparatus manufacturer to perform such duty.

(m) Negative-pressure self-contained breathing apparatus with a rated service life of more than two hours and which has a minimum protection factor of 5,000 as determined by an acceptable quantitative fit test performed on each individual, shall be acceptable for use only during those situations for which the employer demonstrates that long duration breathing apparatus is necessary.

1. Quantitative fit test procedures shall be available for inspection by the Commissioner, Department of Health.

2. Negative-pressure breathing apparatus shall continue to be acceptable for 18 months after a positive-pressure breathing apparatus with the same or longer rated service life is certified by the National Institute for Occupational Safety and Health. After this 18-month period, all self-contained breathing apparatus used for these long duration situations shall be of the positive-pressure type.

2:100-10.11 Life safety rope, harnesses, and hardware

(a) The employer shall provide, at no cost to the employee, and assure the use of life safety rope, harnesses, and hardware which complies with this section.

(b) The employer shall assure that the life safety ropes, harnesses, and hardware complying with this section are used to support fire service personnel during rescue, firefighting, and other emergency operations, or during training exercises, on a date one year after the effective date of this subchapter.

(c) The performance, construction and testing of ropes, harnesses, and hardware for firefighters shall be at least equivalent to NFPA No. 983-1985, Fire Service Life Safety Rope, Harnesses and Hardware.

2:100-10.12 Personal alert safety system

(a) The employer shall provide, at no cost to the employee, and assure the use of a personal alert safety system which complies with this section.

(b) The employer shall assure that all firefighters wear personal alert safety systems complying with this section on a date one year after the effective date of this subchapter.

(c) The performance, construction and testing of a personal alert safety system for a firefighter shall be at least equivalent to NFPA No. 982-1988, Personal Alert Safety Systems (PASS) for Fire Fighters.

(d) Approved personal alert safety systems shall be provided and worn by the firefighters as follows:

1. While engaged in interior structural firefighting;
2. While working in confined spaces; and
3. During all phases of overhaul.

2:100-10.13 Hearing protection

(a) Hearing protection shall be provided for and used by all fire department members operating or riding on fire apparatus when subject to noise in excess of 90 dBA.

(b) The fire department shall provide hearing protection for all members when they are exposed to noise in excess of 90 dBA from power tools or equipment. Such hearing protection shall be used, except for situations where the use of hearing protection devices would create an additional hazard to the user.

(c) The fire department shall engage in a hearing conservation program to identify and reduce or eliminate potentially harmful sources of noise in the work environment. Where audiometric testing indicates a significant hearing loss for a member, the fire department shall treat this condition on an individual basis, as well as move to control potentially harmful noise exposure to any or all other department members.

(d) The provisions of CFR 1910.95, Occupational Noise Exposure, incorporated at N.J.A.C. 12:100-4.2(a), Subpart g, Occupational Health and Environmental Control, continue to be applicable to this chapter.

12:100-10.14 Filling air cylinders

(a) Air cylinders shall be refilled in accordance with CGA P-15-1985, Filling of Industrial and Medical Nonflammable Compressed Gas Cylinders.

(b) Air cylinders for respiratory equipment shall be filled only by personnel trained, experienced and knowledgeable in the equipment and procedures.

(c) The charging station shall be equipped with proper facilities to ensure the safety of the charging station operator and nearby personnel. This may include fragmentation shields and a water tank.

(d) The charging station shall be equipped with proper facilities to ensure that the compressed air complies with Type 1 Grade D breathing air as described in CGA G7.1-1973, Commodity Specification for Air.

12:100-10.15 Fire apparatus operations

(a) Whenever fire apparatus leaves the fire station in response to an alarm or fire or other emergency, all firefighters shall have donned and shall be prohibited from donning protective clothing while the apparatus is in motion. The term "fire apparatus" does not include automobiles. The driver of the fire apparatus shall be allowed to drive the apparatus without donning full protective clothing.

(b) The employer shall provide restraining devices for all firefighters aboard a fire apparatus on a date five years after the effective date of this subchapter. Restraining devices may include providing protective seating for all firefighters aboard.

12:100-10.16 Maintenance of firefighter equipment

(a) The employer shall maintain and inspect, at least annually, firefighting equipment to assure the safe operational condition of the equipment.

(b) Portable fire extinguishers and respirators shall be inspected at least monthly.

(c) Firefighting equipment that is in damaged or unserviceable condition shall be removed from service and replaced.

12:100-17.1 Documents referred to by reference

(a) The full title and edition of each of the standards or publication referred to in this chapter are as follows:

1. (No change.)
2. ANSI Z88.5-1981, Respiratory Protection for the Fire Service. Renumber existing 2 through 8 as 3 through 9 (No change in text.)
10. CGA G7.1-1973, Commodity Specification for Air.
11. CGA P15-1985, Filling of Industrial and Medical Nonflammable Compressed Gas Cylinders.
12. NFPA No. 1971-1986, Protective Clothing for Structural Fire Fighting.
13. NFPA No. 1972-1987, Structural Fire Fighters Helmets.
14. NFPA No. 1973-1988, Gloves for Structural Fire Fighters.
15. NFPA No. 1974-1987, Standard on Protective Footwear for Structural Fire Fighting.
16. NFPA No. 1975-1985, Station/Work Uniforms for Fire Fighters.
17. NFPA No. 1981-1986, Self-contained Breathing Apparatus for Fire Fighters.
18. NFPA No. 1982-1988, Personal Alert Safety Systems (PASS) for Fire Fighters.
19. NFPA No. 1983-1985, Fire Service Life Safety Rope, Harnesses, and Hardware.

Renumber existing 9 through 13 as 20 through 24 (No change in text.)

12:100-17.3 Availability of documents from issuing organization

Copies of the standards and publications referred to in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning, and are the organizations issuing the standards and publications listed in N.J.A.C. 12:100-17.1.

ANSI (No change.)

CFR (No change.)

CGA Compressed Gas Association Inc.

1235 Jefferson Davis Highway, Suite 509

Arlington, VA 22202

NFPA National Fire Protection Association

Battermarch Park

Quincy, MA 02269

NIOSH (No change.)

N.J.A.C. (No change.)

N.J.S.A. (No change.)

(a)

DIVISION OF WORKPLACE STANDARDS

Safety and Health Standards for Public Employees Standard for Indoor Firing Ranges for Public Employees

Proposed New Rules: N.J.A.C. 12:100-8

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 34:6A-25 et seq., specifically 34:6A-30, 31 and 32.

Proposal Number: PRN 1989-208.

Submit comments by May 31, 1989 to:

Alfred B. Vuocolo, Jr.

Chief Legal Officer

Office of the Commissioner

Department of Labor

CN 110

Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

The New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., was enacted on January 17, 1984, to ensure that all public employees are provided with a safe and healthful workplace free from recognized hazards. Under N.J.S.A. 34:6A-25 et seq., applicable standards from the Federal Occupational Safety and Health Act (OSHA) were adopted by the State. Where no Federal standards are applicable or where standards more stringent than the Federal standards are deemed advisable, the State, under the New Jersey law, may develop and adopt standards as may be necessary in special circumstances. Of special concern is the exposure to lead and noise for public employees including firing range officers, firearm instructors and employees who perform maintenance work in an indoor firing range.

Law enforcement agencies require their personnel to be proficient and accurate in the use of handguns. The establishment of regular training programs have resulted in an increase in the construction and use of indoor firing ranges. Advantages of indoor ranges include protection from the weather, control of the environment and the use of the facility around the clock.

Environmental studies have shown that the use of indoor firing ranges without adequate ventilation can result in significant lead exposure. Lead oxide fumes are generated by firing handguns in three ways: by combustion of lead compounds in primer materials, by friction of the bullets against the gun barrel, and by the fragmentation of lead-containing bullets striking the target or backstop.

Recent investigation in a number of firing ranges have demonstrated adverse effects among firearms instructors. The risk of adverse health effects as a result of excessive lead exposure involves primarily the range officers, firearms instructors and public employees who perform maintenance work in an indoor firing range. These employees often spend

several hours a day in the range, whereas patrol officers and trainees only fire weapons in the range during requalification sessions and short practice periods which are held during the year.

In firing ranges, inhalation of lead dust and fumes is the major source of lead exposure. A secondary source of exposure may be from ingestion of lead dust deposited on food, cigarettes, or other objects. Once absorbed, lead is excreted from the body very slowly. Absorbed lead can damage the kidneys, peripheral and central nervous systems, and the blood-forming organs. These effects may be felt as weakness, tiredness, irritability, digestive disturbances, high blood pressure, kidney damage, mental deficiency, or slowed reaction times. Chronic lead exposure is associated with infertility and with fetal damage in pregnant women.

The signs and symptoms of lead intoxication are well documented. The symptoms of lead intoxication include loss of appetite, metallic taste in the mouth, constipation, nausea, pallor, excessive tiredness, weakness, insomnia, headache, nervous irritability, muscle and joint pains, fine tremors, numbness, dizziness, hyperactivity, and colic, and there may be severe abdominal pain.

The problem of exposure to lead in indoor firing ranges has been documented by a survey conducted by the Department of Health. Forty-eight surveys were conducted at municipal (41), county (four), police academy (one) and private (two) indoor firing ranges. The surveys consisted of an evaluation of the ventilation design specifications, operating ventilation system, use patterns and work practices, and analyses of blood samples for lead and free erythrocyte protoporphyrin.

From the specific ventilation measurements, the number of ranges with inadequate provisions for supply air, exhaust air, and air velocity at the firing line was determined. Thirty-six of the 48 ranges were found to have inadequate provisions for all three components of the ventilation system.

The results of the blood tests indicated that 28 (or 21 percent) of the 131 range personnel tested had blood lead levels above normal values (greater than 30 ug/100 ml). In 37 percent of the ranges, firing range instructors had elevated blood leads. The results of this survey indicate a serious problem for firing range officers in New Jersey municipal indoor firing ranges.

The National Institute for Occupational Safety and Health has developed recommendations for design consideration and work practices to reduce or eliminate health hazards associated with indoor firing ranges. These recommendations are found in the NIOSH publication "Lead Exposure and Design Considerations for Indoor Firing Ranges", HEW Pub. No. (NIOSH) 76-130. This NIOSH publication recommends that exposure to lead in firing ranges be reduced by limiting the time a person spends in the range; improving the range ventilation; and substituting copper jacketed, nylon jacketed or zinc bullets for the lead wadcutters. No Federal standards specifically address these design considerations and work practices.

The current U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) lead standard (29 CFR 1910.1025) has been adopted by the New Jersey Department of Labor at N.J.A.C. 12:100-4.2(a)18 and will be enforced under the provisions of the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq.

The proposed new rules are divided into eight sections. This subchapter regulates the design considerations, work practices and ammunition used at existing and new indoor firing ranges operated by public employers. The rules provide for the use of specified ammunition during practice sessions which will reduce the lead emissions and air levels of lead in the indoor firing ranges.

The proposed new rules provide for specified minimum ventilation, including specifications for supply air, exhaust capacity and air velocity at the firing line.

By reference, the subchapter adopts the Occupational Safety and Health Administration's Noise Exposure Standards. In addition, the subchapter requires that specified work practices be followed. These include the method of cleaning using a vacuum cleaner equipped with a high efficiency particulate filter and the use of personal protective equipment by employers.

N.J.A.C. 12:100-8.1 sets forth the scope of the subchapter, and N.J.A.C. 12:100-8.2 is a definitions section.

N.J.A.C. 12:100-8.3 cites the applicable lead standard. N.J.A.C. 12:100-8.4 discusses the type of ammunition to be used in indoor firing ranges.

N.J.A.C. 12:100-8.5 specifies the characteristics of the ventilation system, and N.J.A.C. 12:100-8.6 addresses noise exposure limits and ways to reduce noise levels.

N.J.A.C. 12:100-8.7 provides standards for water drains, and N.J.A.C. 2:100-8.8 outlines work practices to be followed when in the indoor firing range.

Social Impact

Many police and other law enforcement agencies require their personnel to qualify for accuracy using the handgun and it is advantageous for these agencies to construct indoor firing ranges. Indoor ranges offer usual advantages over outdoor ranges such as protection from inclement weather and around-the-clock use of the facility under controlled environmental conditions. There are, however, disadvantages in using an indoor range. Indoor ranges can and do present health hazards in the form of lead poisoning and high noise levels. In addition, there may be problems with exposure to carbon monoxide and oxides of nitrogen.

The implementation of the proposed new rules will reduce the exposure to lead and the risk of lead poisoning for the firing range officers, firearms instructors and maintenance personnel who work in indoor firing ranges. An indoor firing range can be designed to protect the health as well as the safety of the employees who work in these ranges.

In addition to reducing the risk for lead poisoning, the implementation and the enforcement of these rules will reduce the risk of hearing loss to the firing range officers, firearm instructors who work in the range and the patrol officers who practice and qualify in these ranges.

The proposed new rules will require State, county and municipal agencies to renovate the ventilation systems of some indoor firing ranges, provide personal protective equipment to employees and purchase a vacuum cleaner. In addition, the law enforcement agency as an employer will be responsible for compliance with these standards.

Economic Impact

The implementation of the provisions of these rules will reduce the lead lead levels of the employees who work in these ranges and will reduce the risk for lead poisoning. If this is accomplished, there will be a significant decrease in the liability of the employers who operate these indoor ranges. There will also be a reduction in the amount of insurance premiums of private expenses required to pay for physician visits and hospitalization. The reduced health risks to personnel for employees who work in these ranges will also reduce the number of work loss days and workers' compensation premiums.

The implementation of these rules will require employers to correct ventilation deficiencies which have already been identified as a result of a survey conducted by the Department of Health. In addition, there will be increases in the operating costs associated with using the specified ammunition and the purchase of approved respirators and ear protectors.

The costs associated with correcting the ventilation will vary depending on the scope of the renovations needed to meet the minimum ventilation requirements. Some remedial work will only involve a balancing of the ventilation system while the ventilation system in some of the ranges will require upgrading or major installation of ductwork and fans. In three ranges which have completed remedial projects to accomplish the ventilation requirements the costs have ranged from \$7,000 (upgrading) to \$60,000 (major installation).

In addition to the costs associated with improving the ventilation system, each employer is required to purchase a vacuum cleaner (\$1,200) and provide personal protective equipment for maintenance employees he estimated cost for one employee is \$75.00). Most ranges are currently equipped with floor drains. The costs of installing a floor drain will vary depending on the type of floor and plumbing in the range. It is estimated that this installation would cost approximately \$700.00.

The costs of using the required ammunition during practice sessions will vary depending on the type of ammunition that is currently being used. The jacketed soft point and the jacketed hollow point ammunition costs range from \$13.00 to \$19.00 per 50. The niyclad ammunition costs approximately \$16.00 per 50. The most frequently used ammunition currently used for practice ammunition are wadcutters (\$9.00 to \$14.00 per 50) and factory reloads (\$8.00 to \$10.00 per 50). Thus, there will be increased costs for practice ammunition if jacketed soft point or jacketed hollow point ammunition is not currently used for practicing.

Regulatory Flexibility Statement

The proposed new rules do not impose any additional reporting, recordkeeping or compliance requirements on small businesses pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as only public employers in the State of New Jersey will be affected by the proposed new rules. Thus, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

SUBCHAPTER 8. STANDARD FOR INDOOR FIRING RANGES FOR PUBLIC EMPLOYEES

12:100-8.1 Scope

(a) This subchapter shall apply to the following:

1. The design considerations, work practices, and ammunition used at existing and new indoor firing ranges operated by public employers;
2. Public employees assigned to work at an indoor firing range; and
3. Public employers who operate indoor firing ranges and who are responsible for complying with the provisions of this standard.

12:100-8.2 Definitions

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

"Bounce back" means the occasion when hard zinc bullets bounce off the surface of the bullet trap.

"Bullet trap" means the area of the firing range furthest from the shooting area which is equipped with plates to capture the expended bullets after firing.

"Indoor firing range" means the room inside a building which contains the shooting booths and is used for the shooting of firearms.

12:100-8.3 Lead standard

The Lead Standard, Section 1910.1025 of 29 CFR Part 1910, adopted by reference at N.J.A.C. 12:100-4.2(a)18, shall be applicable at indoor firing ranges.

12:100-8.4 Ammunition

(a) The ammunition used in indoor firing ranges during practice sessions shall be zinc bullets or nylon jacketed or copper jacketed bullets. Service ammunition routinely used by the public employer may be used for qualification sessions.

(b) When selecting the type of ammunition to be used to comply with (a) above, consideration shall be given to a potential problem of "bounce back" of the much harder zinc bullet from the bullet trap in some ranges. Consideration shall be given to the potential eye hazard to shooters which may make the use of the zinc bullets unsafe unless changes are made in the bullet trap.

12:100-8.5 Ventilation system

(a) The minimum air velocity shall be 50 feet per minute at the firing line. An optimum air velocity should be 75 feet per minute at the firing line.

(b) Filtered and conditioned air shall be introduced behind the firing line to guarantee an evenly distributed flow of air through the shooting positions. Supplied air inlets should be placed approximately 15 feet behind the shooter's position.

(c) The entire range facility shall be maintained at a slightly negative pressure with respect to adjacent areas to prevent the escape of contaminants. Exhaust air shall exceed supplied air by at least 10 percent. For maximum efficiency, exhaust ducts should be located behind and at the apex of the bullet trap. An alternative location is to place the exhaust ducts on the side walls slightly in front of the apex of the bullet trap.

(d) A minimum down range conveying velocity of 35 feet per minute shall be maintained. When the 75 feet per minute rate is used, a minimum of 25 percent of the air should be exhausted 15 to 20 feet down range of shooting position and the remaining 75 percent at the bullet trap. When the 50 feet per minute rate is used, 100 percent of the air should be exhausted down range at the bullet trap.

(e) Each range shall have its own ventilation system to prevent the circulation of contaminated air to other areas of the building.

(f) The supply and exhaust systems shall be electrically interlocked, thereby eliminating an error in turning one system on and not the other. The system shall operate on one fan speed only.

(g) All air exhausted from the firing range shall be emitted in accordance with applicable Federal, State and local laws.

12:100-8.6 Noise exposure

(a) The Occupational Noise Exposure Standard, Section 1910.95 of 29 CFR Part 1910, adopted by reference at N.J.A.C. 12:100-4.2(a)5, shall be applicable at indoor firing ranges.

(b) To minimize the effect of peak sound pressure levels on individuals in the indoor range, all reflecting walls should be covered with high efficiency sound absorbing material. The coverings should be designed to permit easy cleaning and access to the acoustical material for periodic replacement.

(c) The floors directly behind the shooting booths should be covered with acoustical flooring.

(d) Firing range control rooms should be acoustically treated to reduce noise levels.

(e) The bullet trap should not be anchored or attached to any structural support for the building.

12:100-8.7 Water drains

(a) Each firing range shall be equipped with a floor drain and trap to facilitate cleaning by a wet method. The drain location should be approximately 20 feet down range of the firing line. The floor should slope two to three inches toward the drain.

(b) All water drained from the firing range shall be discharged in accordance with applicable Federal, State and local laws.

12:100-8.8 Work practices

(a) The ventilation system shall be in operation at all times while the range is in use and during clean-up.

(b) The range shall be cleaned by vacuum or a wet method. The use of a hand broom shall be prohibited. Vacuum cleaners shall be equipped with high efficiency particulate filters (HEPA) or the equivalent.

(c) At all times while cleaning, repairing, or reclaiming lead in the bullet trap, a National Institute of Occupational Safety and Health approved half-mask, air purifying respirator equipped with high efficiency filters and disposable coveralls shall be the minimum personal protective equipment worn by all employees performing one of more of these tasks.

(d) Proper ear protection shall be provided for and worn by all individuals inside the firing range. The ear protectors shall be selected on the basis of offering a noise reduction rating of at least 20 decibels. In cases where the noise decibel level is at or above 100 decibels, both plugs and muffs shall be worn simultaneously.

(e) Ear plugs, when worn, shall be properly fitted.

(f) A hearing conservation program shall be instituted and yearly audiometric examinations shall be provided to the firing range officers and instructors.

(g) Eating, drinking, or smoking in the range shall be prohibited.

(h) A specific schedule shall be established to perform maintenance and repair work to keep the range facilities operational and free of hazardous conditions.

LAW AND PUBLIC SAFETY**(a)****DIVISION OF CONSUMER AFFAIRS****Office of Weights and Measures****General Commodities; Weights and Measures****Proposed Readoption: N.J.A.C. 13:47C**

Authorized By: Thomas W. Kelly, State Superintendent, Office of Weights and Measures.

Authority: N.J.S.A. 51:1-61.

Proposal Number: PRN 1989-207.

Submit comments by May 31, 1989 to:

Thomas W. Kelly, State Superintendent
Office of Weights and Measures
Division of Consumer Affairs
Department of Law and Public Safety
1261 Routes 1 and 9 South
Avenel, New Jersey 07001

The agency proposal follows:

(CITE 21 N.J.R. 1096)

NEW JERSEY REGISTER, MONDAY, MAY 1, 1989

Summary

Pursuant to Executive Order No.66 (1978), N.J.A.C. 13:47C expire on August 6, 1989. The Office of Weights and Measures has reviewed these rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Office of Weights and Measures has determined that the rules are reasonable in the degree of regulation set forth to protect both the consuming public and the merchant. The Office also believes that the rules continue to be necessary to maintain equity in the marketplace.

A summary of each chapter section follows:

N.J.A.C. 13:47C-1.1 defines words and phrases.

N.J.A.C. 13:47C-2.1 provides for the sale of meat and poultry by net weight. N.J.A.C. 13:47C-2.2 provides the standard for sectioned poultry.

N.J.A.C. 13:47C-2.3 provides rules for the sale of dried or smoked fish. N.J.A.C. 13:47C-2.4 provides rules for the sale of divided units of food. N.J.A.C. 13:47C-2.5 provides rules for the sale of shellfish. N.J.A.C. 13:47C-2.6 provides rules for the sale of fresh meat roasts. N.J.A.C. 13:47C-2.7 provides rules for the methods of sale, packaging and labeling of primal cuts of meat.

N.J.A.C. 13:47C-3.1 provides rules for the sale, distribution and delivery of firewood. N.J.A.C. 13:47C-3.2 provides rules for the sale of holiday decorating materials. N.J.A.C. 13:47C-3.3 provides rules for the sale by net weight of wiping materials. N.J.A.C. 13:47C-3.4 provides rules for the method of advertisement of building materials and paneling. N.J.A.C. 13:47C-3.5 provides penalties for non-compliance with these rules. N.J.A.C. 13:47C-3.6 provides and adopts the standards for treated lumber.

N.J.A.C. 13:47C-4 provides and adopts the industry standards for New Jersey Atlantic White Cedar.

N.J.A.C. 13:47C-6 sets forth the security bond requirements for transmitters of buyers of precious metals.

Social Impact

In order that both the buyers and sellers of general retail commodities such as food, firewood, building materials and precious metals are protected during commercial transactions, reasonable rules must be set forth in a formal fashion, in order that both parties, during such transactions, know their rights and responsibilities. N.J.A.C. 13:47C has accomplished this goal by providing the necessary uniform standards by which commercial transactions are regulated. The social impact has been a positive one for both consumers and merchants in that consumers are protected from unscrupulous commercial dealings and merchants are properly and uniformly advised of their responsibility in the marketplace.

It has been, historically, a function of government to stand as the third person between buyer and seller to insure an orderly climate for the exchange of goods. N.J.A.C. 13:47C has provided that necessary order for society in general and specifically to consumers and merchants. The proposed re-adoption will continue this mandate. If the rules were not re-adopted chaos in the transaction of commercial goods would certainly be commonplace where competing interests would falter without a standard to govern them.

Economic Impact

There should be no additional cost to the regulatory agencies above that which they now bear in terms of their day-to-day operations, which include an inspector force of approximately 150 State, county and municipal weights and measures officers who now inspect and regulate these commodities. Because the rules are basically unchanged in scope, the merchant will face no additional costs. The costs incurred by merchants under the rules involve various requirements for labeling, advertising and the manner of sale.

The consuming public will continue to be protected in its multi-billion dollar purchases of foodstuffs, fuels, clothing, construction materials and precious metals.

The costs on the Office of Weights and Measures which must oversee compliance with these rules and the costs to the merchants who must comply with the rules is not easily quantifiable. The benefits to the consuming public, however, in savings from the prevention of overcharge and the maintenance of a uniform system of buying and selling outweigh the burden of costs which these rules may impose.

Regulatory Flexibility Analysis

The rules proposed for re-adoption affect regulatory officials and merchants in the marketplace engaged in the sale of those items as set forth in the summary above. Many, if not most, such merchants are small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules do not impose any reporting or

record keeping requirements on such small businesses. The current compliance requirements relating variously to labeling, advertising and the manner of sale are continued. In order to fairly accomplish the consumer protection objective of these rules, a lessening of these compliance requirements for small businesses is not possible.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:47C.

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

Speed Limits

Route N.J. 35 in Middlesex County

Proposed Amendment: N.J.A.C. 16:28-1.49

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 1989-200.

Submit comments by May 31, 1989 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 new milepost limits concerning speed limits along Route N.J. 35 in Woodbridge Township, Middlesex 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 local government officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of new milepost limits along Route N.J. 35 in Woodbridge Township, Middlesex County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.49 based upon the request from local government officials and the traffic investigation.

Social Impact

The proposed amendment will establish new milepost limits concerning speed limits along Route N.J. 35 in Woodbridge 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 government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "milepost" 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 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 amendment primarily affects the motoring public.

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

16:28-1.49 Route 35 including Higgins Avenue, Route U.S. 9 and 35' and Route 35 and 71

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

(d) The rate of speed designated for State highway Route 35 described in [(d) of] this subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed [thereat] for both directions of traffic:

1.-7. (No change.)

8. Forty-five mph [from the Route 440 underpass in] **between the City of Perth Amboy [in] - Woodbridge Township [to] line, Middlesex County and 700 feet south of Bunns Lane (milepost [53.4] 54.20 to [54.9] 54.74).**

9. Thirty-five mph [from] **between 700 feet south of Bunns Lane and Seymour Avenue in Woodbridge Township, Middlesex County (milepost [54.9] 54.74 to [55.8] 55.82);** except

i. (No change.)

10.-11. (No change.)

(b)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping

Route U.S. 30 in Camden County

Proposed Amendment: N.J.A.C. 16:28A-1.21

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 1989-201.

Submit comments by May 31, 1989 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. 30 in the Borough of Lindenwold, Camden County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon a request from local government officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no parking bus stop" zones along Route U.S. 30 in the Borough of Lindenwold, Camden County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.21 based upon the request from local government officials and the traffic investigation.

Social Impact

The proposed amendment will establish "no parking bus stop" zones along Route U.S. 30 in the Borough of Lindenwold, Camden County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. 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 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 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 amendment primarily affects 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) (No change.)

(b) The certain parts of the State highway Route U.S. 30 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

- 1.-3. (No change.)
- 4. Along the (White Horse Pike) southbound on the westerly side in Oaklyn Borough, Camden County:
 - i. Near side bus [stop] stops:
 - (1) (No change.)
 - (2) West Lakeview Avenue—Beginning at the northerly curb line of West Lakeview Avenue and extending 115 feet northerly therefrom;
 - (3) West Oakland Avenue—Beginning at the southerly curb line of West Oakland Avenue and extending 105 feet southerly therefrom;
 - (4) Capitol Avenue—Beginning at the southerly curb line of Capitol Avenue and extending 105 feet southerly therefrom.
 - ii. Far side bus [stop] stops:
 - (1) (No change.)
 - (2) West Beechwood Avenue—Beginning at the southerly curb line of West Beechwood Avenue and extending 100 feet southerly therefrom;
 - (3) West Collingswood Avenue—Beginning at the southerly curb line of West Collingswood Avenue and extending 100 feet southerly therefrom.
- 5.-21. (No change.)
- [22. Along the (White Horse Pike) southbound (westerly) side in the Borough of Oaklyn, Camden County:
 - i. Near side bus stops:
 - (1) West Lakeview Avenue—Beginning at the northerly curb line of West Lakeview Avenue and extending 115 feet northerly therefrom;
 - (2) West Oakland Avenue—Beginning at the southerly curb line of West Oakland Avenue and extending 105 feet southerly therefrom;
 - (3) Capitol Avenue—Beginning at the southerly curb line of Capitol Avenue and extending 105 feet southerly therefrom.
 - ii. Far side bus stops:
 - (1) West Beechwood Avenue—Beginning at the southerly curb line of West Beechwood Avenue and extending 100 feet southerly therefrom;
 - (2) West Collingswood Avenue—Beginning at the southerly curb line of West Collingswood Avenue and extending 100 feet southerly therefrom.]
- 22. Along the (White Horse Pike) northbound (easterly) side in the Borough of Lindenwold, Camden County:
 - i. Near side bus stops:
 - (1) North United States Avenue—Beginning at the southerly curb line of North United States Avenue and extending 105 feet southerly therefrom;
 - (2) West Linden Avenue—Beginning at the southerly prolonged curb line of West Linden Avenue and extending 105 feet southerly therefrom;
 - (3) West Maple Avenue—Beginning at the southerly prolonged curb line of West Maple Avenue and extending 105 feet southerly therefrom.
- 23. Along the (White Horse Pike) southbound (westerly) side in the Borough of Lindenwold, Camden County:
 - i. Near side bus stops:
 - (1) East Maple Avenue—Beginning at the northerly prolonged curb line of East Maple Avenue and extending 105 feet northerly therefrom.
 - (2) Linden Avenue—Beginning at the northern prolonged curb line of Linden Avenue and extending 105 feet southerly therefrom.

Renumber existing 23 through 26 as 24 through 27. (No change in text.)

(a)

POLICY AND PLANNING

DIVISION OF TRANSPORTATION ASSISTANCE

Autobuses

Autobus Specifications for Van-Type Autobuses; Special Equipment for Vehicles Used to Transport Passengers in Wheelchairs; Autobus Specifications; Modified Interiors or Autobuses Used for Charter or Special Bus Operations; Autobus Specifications for Small Bus; Specifications for Special Autobus Type Recreational Vehicles; Specifications for Sedan-Type Autobuses and Designated Fees for Autobus Inspections.

Proposed New Rules: N.J.A.C. 16:53

Authorized By: Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 52:14D-1 et seq.

Proposal Number: PRN 1989-202.

Submit comments by May 31, 1989 to:

Charles L. Meyers
 Administrative Practice Officer
 Department of Transportation
 1035 Parkway Avenue
 CN 600
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66 (1978), N.J.A.C. 16:53 expired on March 19, 1989. The Department of Transportation, pursuant to N.J.A.C. 1:30-4.4(g), is proposing these rules for adoption as new rules, including amendment to the text of the expired rules and completely new rules.

The expired rules regarding autobus specifications provide for certain vehicular standards, pertaining to the construction of autobuses, vans sedan-type autobuses and special equipment to transport passengers in wheelchairs.

In view of recent technological advances, rules as amended proposed as new guidelines and requirements for periodic maintenance and inspection and establish a self-inspection system by New Jersey Transit Corporation, its subsidiaries and the private motor carrier industry in addition to inspection performed by the Department.

A completely new subchapter 10 has been added, which establishes fee for autobus inspections.

The following outlines the contents of each subchapter:

N.J.A.C. 16:53-1 establishes specifications for vans (formerly van-type autobuses) including methods of maintenance and inspection.

N.J.A.C. 16:53-2 provides special equipment for vehicles used to transport passengers in wheelchairs.

N.J.A.C. 16:53-3 outlines the specifications for autobuses.

N.J.A.C. 16:53-4 prescribes modified interiors for autobuses used for charter or special bus operations.

N.J.A.C. 16:53-5 outlines the requirements for certificates of inspection.

N.J.A.C. 16:53-6 outlines specifications for small buses.

N.J.A.C. 16:53-7 outlines specifications for special autobus type recreational vehicles.

N.J.A.C. 16:53-8 prescribes specifications for sedan-type autobuses

N.J.A.C. 16:53-9 prescribes the requirement for public liability insurance.

N.J.A.C. 16:53-10 establishes fees for autobus inspections.

Social Impact

The autobus rules provide for a system of checks and balances where the safety and well-being of passengers, including the handicapped, are top priority and enhanced through the inspection and maintenance system requirements. The system entails the periodic as well as the on the road

inspection and ensures that the minimum safety standards imposed are met and promote the safety of passengers, especially the handicapped, on a regular basis.

Additionally, the chapter provides requirements for a safe and uniform transit system within the State.

Economic Impact

The Department will incur direct and indirect costs for its workforce for personnel and equipment requirements for the periodic inspection of vehicles. In view of the introduction of autobuses equipped to transport various types of passengers, this will allow carriers to upgrade their equipment and transport more passengers at an appreciable cost saving. The added expenses involved in conforming these buses to these rules is passed on to the buyers of the buses. However, the expense may or may not be passed onto the riders. Despite the financial burden placed on some carriers, the safety factor outweighs the economic burden. Autobuses meeting the specifications prescribed will result in lower maintenance and operating costs. The carrier will be required to pay the fee for smoke emission and brake test inspections performed by Department personnel.

Regulatory Flexibility Statement

The proposed new rules do not place any bookkeeping or recordkeeping compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, compliance requirements are placed on the approximately 500 bus companies in the State qualifying as small businesses, specifically in the areas of smoke emission and brake system testing. In view of these requirements and the equipment costs, the Department instituted a program for testing emissions and brake systems on Saturday to provide necessary relief to the industry. The changes to the rules now in the Code primarily effect changes in standards within the autobus industry.

Full text of the proposed new rules can be found in the New Jersey Administrative Code at N.J.A.C. 16:53.

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

CHAPTER 53
AUTOBUSES

SUBCHAPTER 1. AUTOBUS SPECIFICATIONS FOR VAN
TYPE AUTOBUSES

16:53-1.1 Scope

(a) (No change.)

(b) Any van now in operation or acquired prior to [January 2, 1983] **June 1, 1989** and for which the New Jersey Department of Transportation has issued a Certificate of Compliance may continue in service presently designed, constructed and equipped.

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

16:53-1.13 Brakes

(a)-(f) (No change.)

(g) Brakes stopping distances shall be measured by means of instrument or machine of the decelerometer type, capable of being read in feet.

1. Each autobus shall meet the brake stop requirements with an approved and calibrated decelerometer.

2. Brake stop equipment shall be owned, or arrangements made for its use, or provided by others, or testing to be performed by the New Jersey Department of Transportation for a fee, as set forth in N.J.A.C. 16:53-10.2.

3. The brake stop test shall be performed within 20 days prior to self inspection certification.

4. The New Jersey Department of Transportation shall provide facilities to conduct brake tests at various geographic locations. A monthly schedule for testing shall be provided.

(h) (No change.)

16:53-1.17 Exhaust systems

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

(c) The engine shall be maintained in good operating condition so as to prevent emission of unnecessary smoke or vapors. Vehicles shall meet the New Jersey Department of Environmental Protection

motor vehicle emission inspection standard applicable to light duty gasoline fuel motor vehicles.

1. Each vehicle exhaust emission system shall be inspected utilizing equipment approved by the New Jersey Department of Environmental Protection.

2. Inspection of the vehicle exhaust emission system may be conducted by the vehicle company, by a designated person chosen by the company or by the New Jersey Department of Transportation for a fee, as prescribed in N.J.A.C. 16:53-10.1.

3. Each vehicle must be inspected every six months by a person qualified to conduct emission testing. Inspections must be completed no later than 20 days prior to the expiration date indicated on the sticker issued by the Department. Inspection performed by other than New Jersey Department of Transportation personnel shall require a certification from the individual conducting such inspection indicating his or her qualifications to conduct such a test and the type of equipment used.

4. The New Jersey Department of Transportation shall provide facilities to conduct exhaust emission testing at various geographic locations. A monthly schedule for testing will be provided.

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

SUBCHAPTER 3. AUTOBUS SPECIFICATIONS

16:53-3.1 Scope

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

(c) Any autobus now in operation or acquired prior to [January 2, 1983,] **June 1, 1989** and for which [this] the Department has issued a Certificate of Compliance, may continue in service as presently designed, constructed and equipped where the context of these specifications indicates to the contrary. Any autobus for which a contract of sale or purchase order has been entered into[,] on or before [January 2, 1983,] **June 1, 1989** should be certificated in accordance with specifications in effect prior to [January 2, 1983] **June 1, 1989**.

(d) (No change.)

16:53-3.2 Dimensions of autobuses

(a) (No change.)

(b) The overall width shall not exceed 102 inches outside measurements. For buses exceeding [96] **102** inches, see [paragraph] (c) below.

(c) No autobus with an outside width in excess of [96] **102** inches[,] will be approved unless the request for approval is accompanied by a certificate[,] of the Division of Motor Vehicles in the Department of Law and Public Safety, that the proposed width is not unsafe for use on the highways in this State, and of the Department of Transportation, that the proposed width, if in excess of the [96] **102** inches, is not in conflict with the requirements of any agency of the United States having jurisdiction over the National System of Interstate and Defense Highways authorized by law. No outside width so prescribed shall be valid if the allowance or use of same would disqualify the State of New Jersey or any department, agency, or governmental subdivision thereof for the purpose of receiving Federal highway funds.

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

16:53-3.6 Service doors

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

(d) Autobuses equipped with a kneeling feature are required to have the following:

1. A warning sign located on the right front exterior, visible while the door is opened, indicating that the bus kneels;

2. A flashing amber light at least 2½ inches in diameter located at the right front of the vehicle and an audible device which shall be activated when the bus is lowered or raised; and

3. An interlock installed so that during the kneeling cycle, it will be impossible, under normal operating conditions, to put the vehicle in motion.

16:53-3.10 Seat dimensions

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

(e) A tour guide seat may be installed to the right of the center aisle, provided that said seat is not occupied by other than an employee of

the autobus company. When the tour guide seat is not in use, it shall fold to allow a clear 24 inch passageway. The tour guide seat shall be equipped with a seat belt.

16:53-3.12 Handles for standing passengers

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

(e) All vehicles carrying passengers must have the permitted standing passengers capacity of vehicle displayed on the exterior or vehicle adjacent to the area of the entrance door and clearly visible to all boarding passengers. Vehicles not permitting standees shall display on the exterior of the vehicle "No standees".

16:53-3.20 Brakes

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

(c) The braking distance will ordinarily be measured by means of an instrument or machine of the decelerometer type capable of being read in feet.

1. Each autobus shall meet the brake stop requirement with an approved calibrated decelerometer.

2. Brake stop equipment shall be owned, or arrangements made for its use, or provided by others, or testing to be performed by the New Jersey Department of Transportation for a fee, as set forth in N.J.A.C. 16:53-10.2.

3. The brake stop test shall be performed within 20 days prior to self inspection certification.

4. The New Jersey Department of Transportation will provide facilities to conduct brake tests at various geographic locations. A monthly schedule for testing will be provided.

(d) (No change.)

(e) Brake systems shall be equipped with a pressure or power gauge, indicating pounds per square inch or inches of mercury, located in clear view of the driver and illuminated during the period running lights are required.

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

16:53-3.22 Identification

(a) (No change.)

(b) Every autobus shall be assigned an identifying number by the utility. This number [must] shall be displayed on the interior front, and the front, rear and both sides of the exterior. Interior and exterior numbers shall be at least three inches in height. All exterior numbers shall be at least [3%] three inches in height and of a sharply contrasting color from the background. The number at the rear shall be displayed at least 60 inches from the ground.

(c) Each autobus shall [have displayed] display on the right-hand side thereof, the number of the Department's Certificate of Compliance and the charter number, if applicable, in letters and figures three inches high in the following style: NJDOT 12345[.] and/or NJDOT 123C.

16:53-3.23 Certificate of Inspection

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

(f) Any person who issues a Certificate of Inspection or submits a certification to [this] the Department without the required inspection and repair having been performed, shall be deemed to be a disorderly person in accordance with N.J.S.A. 48:4-2.1(a) and be subject to the appropriate penalty.

16:53-3.27 Exhaust systems

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

(d) Such system shall be maintained in good working order in conformity with standards promulgated by the New Jersey Department of Environmental Protection.

1. Each autobus exhaust emission system shall be inspected utilizing equipment approved by the Department of Environmental Protection.

2. Inspection of the autobus exhaust emission system may be conducted by the autobus company, by a designated person chosen by the company or by the New Jersey Department of Transportation for a fee, as set forth in N.J.A.C. 16:53-10.1.

3. Each autobus shall be inspected every six months by a person qualified to conduct emission testing. Inspections shall be completed within 20 days prior to the expiration date indicated on the sticker issued by the Department. Inspections performed by any person other

than New Jersey Department of Transportation personnel shall require a certification from the individual conducting such inspection indicating his or her qualifications to conduct such a test and the type of equipment used.

4. The New Jersey Department of Transportation will provide facilities to conduct exhaust emission test at various geographic locations. A monthly schedule for testing will be provided.

16:53-3.29 Safety glazing and window construction

Glazing shall be a type approved by the Director, Division of Motor Vehicles, and comply with Federal Motor Carrier Safety Regulation [393.90] 393.60 and Federal Motor Vehicle Safety Standard No. 217, pertaining to emergency escape.

16:53-3.32 Speedometers

Each autobus shall be equipped with a suitable speedometer which indicates speed in miles per hour, shall be operative with reasonable accuracy and readily visible to the operator. A method for recording accumulated miles shall also be provided.

16:53-3.40 Mirrors

(a) Interior and exterior mirrors shall be provided to insure a clear view of the vehicle interior and of the exterior sides to the rear.

(b) A video camera designed to view the exterior rear, in addition to rear view mirrors, shall be installed so that the camera is inoperable while the vehicle is in a forward motion.

16:53-3.41 Video monitor and/or television receiver installation for passenger use

(a) An autobus shall not have a video monitor and/or a television receiver installed in such a manner that the viewing screen is visible to the driver while operating the autobus.

(b) The manual changing of station channels for television reception must be done at a location other than from the driver's seat.

(c) The viewing screen shall be installed in such a way as to minimize passenger contact. In addition, viewing screens shall not block normal access to the aisle or emergency escape windows.

(d) Viewing screens placed above passenger seats shall be installed in a manner as to allow a passenger to occupy the seat below the unit without coming into contact with it, while in a normally seated position.

(e) With the exception of the viewing screen and the front perimeter of the housing, the video monitor or the television receiver shall be enclosed in a material designed to soften any passenger impact with the chassis of the unit or its mounting components. Ventilation holes are permitted.

(f) All equipment (video screens, television receivers, video cassette recorders, tape players, etc.) shall be securely mounted to the vehicle, so that they cannot be moved without being intentionally unfastened. In lieu of this requirement, the unit must be inside of an enclosure to prevent its shifting or falling on the driver or passengers.

(g) Wiring shall be installed in a workmanlike manner and shall be equipped with an overload protector.

SUBCHAPTER 4. MODIFIED INTERIORS OR AUTOBUSES USED FOR CHARTER OR SPECIAL BUS OPERATIONS

16:53-4.1 Scope

(a) (No change.)

(b) A New Jersey Department of Transportation autobus whose conventional seating has been modified prior to [January 2, 1983, June 1, 1989] may continue in service as presently designed.

SUBCHAPTER 6. AUTOBUS SPECIFICATIONS FOR SMALL BUS

[FOREWORD]

Note the following references:

FMCSR—	Federal Motor Carrier Safety Regulation
FMVSS No. 217—	Federal Motor Vehicle Safety Standard No. 217
GVW—	Gross Vehicle Weight (Weight of Unloaded Vehicle)
GVAW—	Gross Vehicle Axle Weight

GVWR— Gross Vehicle Weight Rated (Weight of Vehicle including load)
 SMALL BUS— A Vehicle having a seating capacity of 16 to 24 adult passengers, not including driver.]

16:53-6.1 Scope

- (a) (No change.)
- (b) Any small bus now in operation or acquired prior to [January 2, 1983] **June 1, 1989** and for which [this] the Department has issued a Certificate of Compliance, may continue in service as presently designed, constructed and equipped.
- (c)-(d) (No change.)

6:53-6.2 Definitions

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

- “FMCSR” means Federal Motor Carrier Safety Regulations.
- “FMVSS No. 217” means Federal Motor Carrier Safety Standard No. 217.
- “GVW” means gross vehicle weight (weight of unloaded vehicle).
- “GVAW” means gross vehicle axle weight.
- “GVWR” means gross vehicle weight rated (weight of vehicle including load).
- “Small bus” means a vehicle having a seating capacity of 16 to 25 adult passengers, not including the driver.

6:53-[6.2]6.3 Dimensions

- (a) (No change.)
- (b) No autobus with an outside width in excess of [96] **102** inches will be approved unless the request for approval is accompanied by a certificate of the Division of Motor Vehicles in the Department of Law and Public Safety, that the proposed width is not unsafe for use on the highways in this State, and of the Department of Transportation, that the proposed width, if in excess of [96] **102** inches, is not in conflict with the requirements of any agency of the United States having jurisdiction over the National System of Interstate and Defense Highways authorized by law. No outside width so prescribed shall be valid if the allowance or use of same would disqualify the State of New Jersey or any department, agency, or governmental subdivision thereof for the purpose of receiving Federal highway funds.

6:53-[6.3 to 6.9]6.4 to 6.10 (No change in text.)

6:53-[6.10]6.11 Mirrors

- (a)-(b) (No change.)
- (c) A video camera designed to view the exterior rear, in addition to rear view mirrors, shall be installed so that the camera is inoperable while the vehicle is in a forward motion.

6:53-[6.11]6.12 Brakes

- (a)-(f) (No change.)
- (g) Brakes stopping distance shall be measured by means of an instrument or machine of the decelerometer type capable of being read in feet.
 1. Each autobus shall meet the brake stop requirement with an approved calibrated decelerometer.
 2. Brake stop equipment shall be owned, or arrangements made for its use, or provided by others, or testing to be performed by the New Jersey Department of Transportation for a fee, as set forth in N.J.A.C. 6:53-10.2.
 3. The brake stop test shall be performed within 20 days prior to self inspection certification.
 4. The New Jersey Department of Transportation will provide facilities to conduct brake tests at various geographic locations. A monthly schedule for testing will be provided.

(h)-(n) (No change.)

6:53-[6.12 to 6.14]6.13 to 6.15 (No change in text.)

6:53-[6.15]6.16 Exhaust system

- (a)-(b) (No change.)
- (c) The engine shall be maintained in good operating condition[s] so as to prevent emission of unnecessary smoke or vapors. Vehicles shall meet the New Jersey Department of Environmental Protection

Motor Vehicle Emission Inspection Standard applicable to the type of engine installed.

1. Each autobus exhaust emission system shall be inspected utilizing equipment approved by the Department of Environmental Protection.

2. Inspection of the exhaust emission system may be conducted by the autobus company, by a person chosen by the company or by New Jersey Department of Transportation for a fee as set forth in N.J.A.C. 16:53-10.1.

3. Each autobus shall be inspected every six months by a person qualified to conduct emission testing. Inspections shall be completed no later than 20 days prior to the expiration date indicated on the sticker issued by the Department. Inspections performed by any person other than New Jersey Department of Transportation personnel require a certification from the individual conducting such inspection, indicating his or her qualifications to conduct such a test and the type of equipment used.

4. The New Jersey Department of Transportation will provide facilities to conduct exhaust emission test at various geographic locations. A monthly schedule for testing will be provided.

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

16:53-[6.16 to 6.19]6.17 to 6.20 (No change in text.)

16:53-[6.20]6.21 Identification

- (a) (No change.)
- (b) Every autobus shall be assigned an identifying number by the utility. This number [must] shall be displayed on the interior front, and the front, rear, and both sides of the exterior. Interior and exterior numbers shall be at least three inches in height and of a sharply contrasting color from the background. **The number at the rear shall be displayed at least 60 inches from the ground.**

(c) Each autobus shall [have displayed] display on the right-hand side thereof, the number of the Department's Certificate of Compliance and the charter number, if applicable, in letters and figures three inches high in the following style: NJDOT 12345 and/or NJDOT 123C.

16:53-[6.21 to 6.24]6.22 to 6.25 (No change in text.)

16:53-[6.25]6.26 Speedometers

Each autobus shall be equipped with a suitable speedometer which shall be operative with reasonable accuracy in miles per hour and readily visible to the driver. **A method of recording accumulated miles shall also be provided.**

16:53-[6.26 to 6.31]6.27 to 6.32 (No change in text.)

SUBCHAPTER 7. SPECIFICATIONS FOR SPECIAL AUTOBUS TYPE RECREATIONAL VEHICLES

16:53-7.1 Scope

- (a)-(b) (No change.)
- (c) Any vehicle now in operation or acquired prior to [January 2, 1983,] **June 1, 1989** and for which [this] the Department has issued a Certificate of Compliance may continue in service as presently designed, constructed and equipped.
- (d) (No change.)

16:53-7.2 Dimensions

- (a) (No change.)
- (b) No autobus with an outside width in excess of [96] **102** inches will be approved unless the request for approval is accompanied by a certificate of the Division of Motor Vehicles in the Department of Law and Public Safety, that the proposed width is not unsafe for use on the highways in this State, and of the Department of Transportation, that proposed width, if in excess of [96] **102** inches, is not in conflict with the requirements of any agency of the United States having jurisdiction over the National Systems of Interstate and Defense Highways authorized by law. No outside width so prescribed shall be valid if the allowance or use of same would disqualify the State of New Jersey or any [Department] department, agency or governmental subdivision thereof for the purpose of receiving Federal highway funds.

16:53-7.11 Brakes

(a)-(f) (No change.)

(g) Brakes stopping distances shall be measured by means of an instrument or machine of the decelerometer type capable of being read in feet.

1. Each autobus shall meet the brake stop requirement with an approved and calibrated decelerometer.

2. Brake stop equipment shall be owned, or arrangements made for its use, or provided by others, or testing to be performed by the New Jersey Department of Transportation for a fee, as set forth in N.J.A.C. 16:53-10.2.

3. The brake stop test shall be performed within 20 days prior to self inspection certification.

4. The New Jersey Department of Transportation will provide facilities to conduct brake tests at various geographic locations. A monthly schedule for testing will be provided.

(h)-(n) (No change.)

16:53-7.14 Exhaust system

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

(c) The engine shall be maintained in good operating condition so as to prevent emission of unnecessary smoke or vapor. Vehicles shall meet the New Jersey Department of Environmental Protection Motor Vehicle emission inspection standard applicable to type of engine installed.

1. Each autobus exhaust emission system shall be inspected utilizing equipment approved by the Department of Environmental Protection.

2. Inspection of the autobus exhaust emission may be conducted by the vehicle company, by a designated person chosen by the company or by New Jersey Department of Transportation for a fee as set forth in N.J.A.C. 16:53-10.1.

3. Each autobus shall be inspected every six months by a person qualified to conduct emission testing. Inspections shall be completed no later than 20 days prior to the expiration date indicated on the sticker issued by the Department. Inspection performed by any person other than New Jersey Department of Transportation personnel requires a certification from the individual conducting such inspection indicating his or her qualifications to conduct such a test and the type of equipment used.

4. The New Jersey Department of Transportation will provide facilities to conduct exhaust emission test at various geographic locations. A monthly schedule for testing will be provided.

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

16:53-7.15 Windshield wipers and defroster

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

(c) Vehicles shall be equipped with a suitable windshield defroster.

16:53-7.20 Speedometer

Each autobus shall be equipped with a suitable speedometer which shall be operative with reasonable accuracy in miles per hour and readily visible to the driver. A method of recording accumulated miles shall also be provided.

16:53-7.24 Identification

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

(c) Each autobus shall display on the right-hand side thereof, the number of the Department's Certificate of Compliance and the character number, if applicable, in letters and figures three inches in height in the following style: NJDOT 12345 and/or NJDOT 123C.

SUBCHAPTER 8. SPECIFICATIONS FOR SEDAN-TYPE AUTOBUSES

16:53-8.1 Scope

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

(c) Any sedan-type autobus now in operation or acquired prior to [January 2, 1983,] **June 1, 1989** and for which [this] the Department has issued a Certificate of Compliance, may continue in service as presently designed, constructed and equipped.

16:53-8.9 Brakes

(a) Each vehicle shall be equipped with two independent brake systems[,] operating independently of each other and conforming to the following standards of construction and maintenance.

1.-4. (No change.)

5. The braking distance shall be measured by means of an instrument or machine of the decelerometer type capable of being read in feet[; and].

i. Each autobus shall meet the brake stop requirement with an approved and calibrated decelerometer.

ii. Brake stop equipment shall be owned, or arrangements made for its use, or provided by others, or testing to be performed by the New Jersey Department of Transportation for a fee, as set forth in N.J.A.C. 16:53-10.2.

iii. The brake stop test shall be performed within 20 days prior to self inspection certification.

iv. The New Jersey Department of Transportation will provide facilities to conduct brake tests at various geographic locations. A monthly schedule for testing will be provided; and

6. (No change.)

16:53-8.15 Exhaust systems

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

(c) The engine shall be maintained in good operating condition so as to prevent discharge of unnecessary fumes or gases. Vehicles shall meet the New Jersey Department of Environmental Protection motor vehicle emission inspection standard applicable to the type of engine installed.

1. Each autobus exhaust emission system shall be inspected utilizing equipment approved by the Department of Environmental Protection.

2. Inspection of the exhaust emission system may be conducted by the autobus company, by a person chosen by the company or by the New Jersey Department of Transportation for a fee as set forth in N.J.A.C. 16:53-10.1.

3. Each autobus shall be inspected every six months by a person qualified to conduct emission testing. Inspections shall be completed no later than 20 days prior to the expiration date indicated on the sticker issued by the Department. Inspections performed by any person other than New Jersey Department of Transportation personnel require a certification from the individual conducting such inspection indicating his or her qualifications to conduct such a test and the type of equipment used.

4. The New Jersey Department of Transportation will provide facilities to conduct exhaust emission test at various geographic locations. A monthly schedule for testing will be provided.

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

SUBCHAPTER 10. DESIGNATED FEES FOR AUTOBUS INSPECTIONS

16:53-10.1 Smoke emission inspection

The fee charged for a smoke emission test performed by Department of Transportation personnel in conjunction with self inspection certification will be \$15.00 per vehicle.

16:53-10.2 Brake test inspection

The fee charged for a brake test performed by Department of Transportation personnel in conjunction with self inspection certification will be \$15.00 per vehicle.

(a)

THE COMMISSIONER**Jurisdictional Assignments for Railroad Overhead Bridges****Proposed New Rules: N.J.A.C. 16:53B**

Authorized By: Robert A. Innocenzi, Deputy Commissioner,
Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:5G-1 et seq; and
52:14B-4(3).

Proposal Number: PRN 1989-211.

A public hearing concerning these proposed new rules will be held on:
Monday, May 22, 1989 from 2:00 P.M. to 8:00 P.M.
Multipurpose Room, First floor
Engineering and Operations Building
1035 Parkway Avenue
Trenton, New Jersey 08625

Questions pertaining to this hearing are to be referred to NJDOT's
Office of Community Involvement, during business hours at extension
509-530-2110.

Submit written comments by May 31, 1989 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These new rules are proposed to provide the administrative framework for the future implementation of the Railroad Overhead Bridge Act of 1988, P.L. 1988, c.104 (compiled as N.J.S.A. 27:5G-1 et seq.). The Railroad Overhead Bridge Act of 1988 was enacted by the Legislature to establish an orderly and timely mechanism to allocate future responsibilities for bridges carrying roads over railroads where jurisdictions and responsibilities are uncertain.

The Act, and rules required by the Act, shall not become operative and/or effective until additional bridge bond monies are passed by the Legislature and approved by the voters in a general referendum.

As a result of the bankruptcy and Federal reorganization in the 1970's of major railroads serving New Jersey, it became increasingly difficult under New Jersey law to determine who had responsibility for many bridges carrying roads over rail rights of way. In view of this legal uncertainty, many routine maintenance and improvement activities on these bridges came to a temporary halt. Over time, these deferred activities have resulted in a backlog of bridge needs.

The lack of definitive jurisdictions for many of these bridges severely complicates the process of ongoing inspection, repair, rehabilitation and replacement. It is clear that these bridges are a necessary public asset, but their upkeep constitutes a financial liability. Subsequently, while all parties acknowledge necessity of these bridges, no parties have been historically willing to step forward and unilaterally invest resources in their upkeep. Resolving jurisdictional questions is necessary.

The rules proposed herein provide the statutorily mandated administrative process to allocate, in the future, various responsibilities for railroad overhead bridges (RROHB's) with uncertain jurisdictions, along the following general lines:

1. The State, with the New Jersey Department of Transportation as lead agency, would ultimately assume:

a. Full responsibility for RROHB's which carry State highways.
b. Responsibility for the structure portion of, for example, most Conrail and Amtrak RROHB's which carry local and county roads. The municipality or county (as applicable) would ultimately assume responsibility for the routine maintenance of the roadway portion of these bridges. This is a shared jurisdiction where the State is ultimately assuming the more costly portion of the responsibilities for the bridges.

2. The State, with NJ Transit as lead agency, will have responsibility for the structural portion of most RROHB's which carry county and local roads over NJ Transit tracks. The municipality or county (as applicable) would ultimately assume responsibility for maintenance of the roadway portion of such bridges. Again, this is a situation of shared jurisdiction

where the State is assuming the more costly part of the responsibilities for the bridges.

3. Any RROHB which plainly has a preexisting jurisdiction would not be changed. The Department believes that some RROHB's will be found to already have a preexisting jurisdiction of long standing. It is the sense of the Department, however, that this will not be a usual occurrence.

4. Railroad companies are required, at their expense, to provide necessary access, safety service, and review of plans in respect to RROHB projects.

No bridge jurisdiction or responsibilities may be assigned to a municipality or county under these rules until the bridge is subject to a State funded repair or improvement project and the bridge is then determined to be in "good repair." These general conditions are intended to ensure that no local entity is suddenly burdened with previously unforeseen infrastructure responsibilities that require immediate local response.

The general approach to allocating future responsibilities enacted in the Railroad Overhead Bridge Act of 1988 and outlined in these proposed rules takes into account reasonable expectations for how each affected entity can participate in achieving resolution of bridge jurisdictional problems. Each public agency or railroad entity would participate in a manner best suited to their existing expertise. The State has considerable expertise in bridge structural matters and would have the lead in this area. Local authorities would ultimately have responsibility for routine roadway maintenance for the bridges. Railroads would contribute services wholly oriented towards rail and right of way matters.

It is believed that this overall approach will ultimately reduce the jurisdictional problems associated with RROHB's without unduly burdening any individual governmental entity or railroad.

Even with these rules inoperative, the Department anticipates that the provisions proposed herein can provide a mutually acceptable framework for the establishment of, when necessary, voluntary interim bridge jurisdictional agreements. Provisions of these proposed rules also provide that any agency may voluntarily undertake repairs to a bridge, while being assured that these initiatives will not be assumed (under any future proceeding under this chapter) a concession that they have jurisdiction for the bridge.

Social Impact

It is certain that these proposed new rules will have a positive social impact. It is the express purpose of these rules to implement the intent of the Legislature to resolve jurisdictional problems associated with many RROHB's and to facilitate bridge work necessary for protecting the safety and welfare of the public. Although these rules will be inoperative until further bridge bond funding is approved, the Department anticipates that these proposed rules will provide a workable model under which voluntary interim jurisdiction may be established. Improved cooperation and coordination, to the benefit of the public at large, is anticipated to be a direct result of these rules. Another benefit of these rules is that they create standardized criteria for resolution of RROHB jurisdictions and future coordination of interagency RROHB projects. All of these factors have a positive social benefit.

Economic Impact

The Department believes that the economic impact of these proposed rules will be favorable. The Department is aware that it will incur direct and indirect costs associated with the implementation of the rules. However, it is difficult to quantify costs and benefits at this time because of the unknown conditions of some bridges. The very nature of uncertain jurisdictions tend to reduce the amount of engineering and cost data that would otherwise be routinely available. The following data, however, is useful in evaluating the scope of the applicable issues.

There are approximately 6,000 bridges in New Jersey that carry roads. Of these, approximately 665 carry highways over railroads, wherein, approximately 75 percent are either under the jurisdiction of a State agency or a toll authority. The remaining 168 bridges have varying degrees of certain, or uncertain jurisdictions. It is estimated that between 20 percent and 25 percent of these 168 (±) bridges will be found to have a viable preexisting jurisdiction. The remainder are candidates to have their jurisdictional control resolved as provided for in this chapter.

Bridges which cross railroads are, in general, in greater need of repair/rehabilitation/replacement than other bridges. Past Department estimates on RROHB needs have suggested that an average annual minimum State program of between 10 to 15 million dollars for NJ Transit bridges, and between five to 7.5 million annually for jurisdictionally disputed bridges is justifiable. This level of investment, however, would

only appear sufficient to address the most pressing annual needs. Greater annual sums than this could prudently be invested in these bridges, depending upon the availability of funds. Future bridge bond monies have been legislatively specified to fund these bridges. Supplements to these resources will also be necessary.

An essential element of the Act is that it establishes the framework for an increase in resources for needed bridge work. This provides potential relief for already limited State and local resources. The timely investment of resources for bridge repair and improvement can actually save money in the long term by extending their useful life. It is more cost effective to properly maintain bridges, as opposed to deferring maintenance and dealing later with the consequences.

State and local governments each incur costs in respect to railroad overhead bridges. Under these proposed rules, the extent of local costs will be largely contained to routine roadway maintenance on the bridges. The State will be responsible for most other expenses except for those statutorily allocated to the railroads.

A major negative economic impact is incurred when a bridge is forced to be closed. Local commerce suffers and there are added travel costs for those seeking alternate bridge crossings. These rules are part of the resources sought by the Department to help avoid forced bridge closings. The economic consequences of a bridge closure differ for every bridge, but the greatest impacts are almost always felt at the local level.

The legislation authorizing these proposed rules designed prospective jurisdictional responsibilities in general accord with the preexisting expertise of the applicable agencies. To the greatest extent possible, responsibilities allocated under this chapter will be within reach of the technical expertise of the entities involved. This approach should minimize the public cost while maximizing the public benefits.

Regulatory Flexibility Statement

The proposed new rules do not place any reporting, recordkeeping or compliance requirements on small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules apply primarily to State and local governments and providers of railroad services.

Full text of the proposal follows:

CHAPTER 53B JURISDICTIONAL ASSIGNMENTS FOR RAILROAD OVERHEAD BRIDGES

SUBCHAPTER 1. GENERAL PROVISIONS

16:53B-1.1 Purpose and general policies

(a) As a result of the bankruptcy and Federal reorganization of the major railroads serving New Jersey, it became increasingly difficult under New Jersey law to determine who had primary responsibility for many bridges carrying roads over rail rights of way.

(b) The lack of definitive jurisdictions for many railroad overhead bridges has complicated the process of ongoing repair, rehabilitation and replacement of these bridges. Resolving jurisdictional questions is absolutely necessary.

(c) The Legislature recognized the importance of this matter and enacted the Railroad Overhead Bridge Act of 1988, P.L. 1988, c. 171 (N.J.S.A. 27:5G-1 et seq.) (referred to herein as the Act) to address many of the questions confronted in this issue. That Act, and this chapter, are established to provide for orderly and equitable allocation of responsibilities for railroad overhead bridges. It is the express purpose of this chapter to avoid contentious deliberations pertaining to the jurisdiction of these bridges and to provide for reasonable and timely allocations of bridge responsibilities to the applicable parties.

(d) In the allocation of responsibilities under this chapter, emphasis will be put upon fashioning workable and cooperative jurisdictions and responsibilities. The resources and expertise of each of the applicable parties will be carefully considered under the provisions and procedures prescribed by this chapter.

(e) The purpose of this chapter is to resolve jurisdictional problems pertaining to railroad overhead bridges. The provisions herein shall not be applied in a manner contrary to the intent of the Railroad Overhead Bridge Act of 1988, the purpose of which is to provide for equitable allocation of bridge responsibility when jurisdictions are uncertain.

(f) The provisions of this chapter shall not be interpreted or applied in a manner which would impede any responsible party from undertaking necessary or emergent bridge repairs. Additionally, this chapter shall not impede the establishment of supplemental agreements which may be necessary to implement interagency coordination or project review or approvals.

16:53B-1.2 Definitions

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

"Commissioner" means the Commissioner of the Department of Transportation.

"Department" means the New Jersey Department of Transportation.

"Good repair" means that the structure is found by the Commissioner to be in safe and serviceable adequate condition for the purposes and uses to be permitted, based upon sound engineering principles, standards or techniques, which may include those that were acceptable at the time of original construction or at the time of any reconstructions.

"Jurisdiction" means control and responsibility for maintenance, rehabilitation, replacement and inspection as may be ordered by the Commissioner under provisions of this chapter.

"Public entity" includes, but is not limited to, any officers, department, board, commission, division, agency, authority or instrumentality of the State or of any county or municipality.

"Railroad overhead bridge" or "bridge" means any bridge carrying a highway or private road over and across a railroad, subway, or street traction, or electric railway, or over and across the right-of-way of such a railroad, subway, or railway.

16:53B-1.3 General provisions

(a) The provisions of chapter 12 of Title 48 of the Revised Statutes (N.J.S.A. 48:12-1 et seq.) have proven inadequate to ensure that each highway bridge crossing a railroad is under the jurisdiction of an agency which is ready, willing, and able to assume responsibility for the maintenance, inspection and, where necessary, the rehabilitation or replacement of the bridge.

(b) Under this chapter, a mechanism is established whereby each railroad overhead bridge which is to be rehabilitated or replaced, or which is determined to be in a state of good repair, can be assigned to the jurisdiction of a public entity. Under the provisions of this chapter, all parties potentially affected by a bridge jurisdiction assignment may present evidence to the Department. Each assignment shall be made by written order of the Commissioner.

(c) Any railroad overhead bridge which has been assigned to a jurisdiction by written order of the Commissioner under this chapter shall not be considered a bridge or passage under N.J.S.A. 48:12-49, and the provisions of chapter 12 of Title 48 shall not apply to it.

(d) Jurisdiction over a railroad overhead bridge assigned under this chapter may be transferred to another party by voluntary agreement between the parties, provided that the Commissioner approves the agreement by written order.

(e) The issuance by the Commissioner of a written order assigning jurisdiction over a railroad overhead bridge under the provisions of this chapter shall not relieve any party of any tort or contractual liability existing prior to the issuance of that order.

(f) The Commissioner shall not make an order assigning jurisdiction for a railroad overhead bridge which does not carry a State highway unless:

1. The bridge is the subject of an improvement project financed in whole or in part by State funds, in which case the Commissioner may make the order contingent upon satisfactory completion of work;

2. The order assigns jurisdiction to a party who has requested jurisdiction over the bridge by written petition to the Commissioner; or

3. The Commissioner determined it to be in the public interest to accept a written petition for assignment from an affected party other than the party to whom jurisdiction would be otherwise assigned under N.J.A.C. 16:53B-1.4 and the Commissioner further determines that the bridge is in good repair.

16:53B-1.4 Assignment of jurisdictions

(a) Railroad overhead bridge jurisdiction assignments made by the Commissioner shall be done under the consideration of the following criteria and in this order of significance:

1. The Commissioner shall assign all bridges carrying State highways to the jurisdiction of the Department.

2. If a railroad overhead bridge carries a private road, the Commissioner shall assign the bridge to the jurisdiction of the person owning the road.

3. The Commissioner shall assign each railroad overhead bridge carrying a highway, other than a State highway, over and across a right-of-way owned by the New Jersey Transit Corporation to the jurisdiction of that corporation, unless the Commissioner determines, subject to the provisions of (d) below, that the bridge should be assigned to the jurisdiction of another public entity.

4. Following a review of available statutes, regulations, local ordinances, maintenance agreements, records concerning improvement projects and maintenance activities, and any other applicable evidence, and based upon a preponderance of all the evidence reviewed, if it is determined that a county, municipality or other public entity has assumed effective control or responsibility over a bridge, the Commissioner shall assign the bridge to the jurisdiction of that entity. Evidence of maintenance, repair, reconstruction, inspection or other work done following the December 5, 1988 effective date of the Railroad Overhead Bridge Act of 1988 shall not be considered for purposes of assigning a bridge to an entity under this section. This is done in the interest of encouraging entities to maintain the safety of bridges for which the responsibility has yet to be ascertained.

(b) If the provisions of (a) above fail to readily provide for a prospective jurisdictional assignment for a railroad overhead bridge, the Commissioner may order the assignment of joint jurisdiction for the railroad overhead bridge to various persons and/or public entities. The joint jurisdictional order of the Commissioner shall allocate specific jurisdictional responsibilities to the applicable parties. This may include specific responsibilities pertaining to interagency coordination, approvals and inspection responsibilities.

(c) In general, joint jurisdictional orders shall be constructed in the following manner: The Department will assume jurisdictional responsibility for the principal structural elements and abutments of the bridge, which shall include structural repair, maintenance, rehabilitation, and replacement. The entity or entities with jurisdictional responsibility for the approaching roadways shall have responsibility for routine maintenance of the surface roadway carried by the bridge, including but not limited to snow removal, sidewalk and guiderail repair, lighting, appurtenances, striping, signing, patching, and resurfacing. These routine maintenance responsibilities shall not extend to the structural support components of any railroad overhead bridge under the jurisdiction of the Department or the New Jersey Transit Corporation.

(d) Any county or municipality having jurisdiction over a highway carried by or leading onto a railroad overhead bridge assigned to the jurisdiction of the New Jersey Transit Corporation or the Department shall have responsibility for routine maintenance of the surface roadway carried by the bridge, including, but not limited to, snow removal, sidewalk and guiderail repair, lighting, appurtenances, striping, signing, patching, and resurfacing. Routine maintenance responsibilities of a county or municipality shall not extend to the structural support components of any railroad overhead bridge under the jurisdiction of the Department or the New Jersey Transit Corporation.

(e) Any jurisdictional order made under the provisions of this chapter may include specific provisions which apply to interagency coordination, review of plans or projects, or any other administrative matter of significance in carrying out the terms of an order.

16:53B-1.5 Hearings and procedures

(a) Under the provisions of this chapter, only the Commissioner may initiate hearings, for the purpose of assigning bridges. This may be on his or her own motion or in response to a petition. The hearings will be conducted by the Office of Administrative Law pursuant to the Administrative Procedure Act, N.J.C.A. 52:14B-1 et seq., and the

Uniform Administrative Procedure Rules, N.J.C.A. 1:1. Before initiating such hearings, the Commissioner shall first determine that the requirements of section 4b of P.L. 1988, c. 171, as applicable, have been satisfied.

(b) Any party seeking the assignment of jurisdiction over a bridge may petition the Commissioner in writing to initiate hearings. It shall be within the Commissioner's discretion to decide whether or not to initiate hearings based upon such petition.

(c) In any hearing where jurisdiction(s) of a bridge is in question or dispute, the preponderance of the evidence shall serve as the standard for the trier of fact.

(d) Upon receiving the findings and recommendations of the Office of Administrative Law, the Commissioner may issue a final order assigning jurisdiction over a bridge, with such conditions as the Commissioner may deem desirable in the interest of protecting the public safety and welfare.

(e) A final order may be changed or amended by the Commissioner after the Commissioner initiates another hearing, which will be conducted by the Office of Administrative Law pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 and upon receipt of the findings and recommendations resulting from such hearing.

16:53B-1.6 Railroad responsibilities

(a) Regarding the inspection, maintenance, rehabilitation, replacement or removal of railroad overhead bridges assigned under this chapter, each person or railroad company owning or controlling a railroad right-of-way shall provide, in the form and in the manner prescribed by the Commissioner, at its own expense and in a timely fashion, the following services to the party with jurisdiction for the bridge over the right-of-way:

1. Necessary and sufficient access to railroad property and right-of-way, including applicable insurance;

2. Necessary track safety personnel and services, such as flag protection and de-energizing/energizing electric power lines;

3. Review of plans and specifications; and

4. Any other incidental railroad services required to enable the party with jurisdiction over the railroad overhead bridge to undertake its applicable responsibilities, such as release of all appropriate records and plans related to a bridge.

(b) Following notice and a public hearing held pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, if the Commissioner determines that a person or railroad company has failed to provide the services required under this chapter with respect to a specific project for the repair, inspection, rehabilitation, or replacement of a bridge, and further determines that the project is in the public interest, the Commissioner may, by written order, compel the person or railroad company to provide those services determined to be necessary.

16:53B-1.7 Operative date

The Railroad Overhead Bridge Act of 1988 became effective December 5, 1988, but remains inoperative until the passage of additional bridge bond funding by the Legislature. The Act provides, however, that despite being inoperative the Department must adopt implementing regulations. Unless the Railroad Overhead Bridge Act of 1988 becomes operative, the provisions of this chapter are likewise not operative. All parties are nevertheless encouraged to resolve interim jurisdictional matters in a manner consistent with the principles and intent of this chapter.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax

Receipts; Compensation for Services

Proposed Amendment: N.J.A.C. 18:7-8.10

Authorized By: John R. Baldwin, Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27.

Proposal Number: PRN 1989-205.

Submit comments by May 31, 1989 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, New Jersey 08645

The agency proposal follows:

Summary

The proposed amendment promulgates for corporation business tax purposes the manner for allocating to New Jersey receipts from the sale of management, administration or distribution services to the extent that shareholders of the regulated investment company are domiciled in New Jersey. The total receipts from such services are multiplied by a fraction, the numerator of which is the average of the sum of the beginning of the year and the end of year balance of shares owned by the regulated investment company shareholders domiciled in New Jersey for the regulated investment company's taxable year for Federal Income tax purposes which ends within the taxable year of the taxpayer. The denominator of the fraction is the average of the sum of the beginning of the year and end of year balance of shares owned by the regulated investment company shareholders.

The amendment also includes definitions of terms used to arrive at the calculation including "domicile," "regulated investment company," "receipts," "management services," "distribution services," and "administration services."

Social Impact

The proposed amendment will have a positive social impact since it will clearly set forth the manner in which receipts from certain service transactions shall be allocated to New Jersey. Adoption of the amendment will benefit the public by providing clarification as to the calculation of the receipts fraction in the case of affected taxpayers.

Economic Impact

The proposed amendment eliminates points of possible confusion for a class of taxpayers and their advisers over the manner in which receipts from sales of certain services to a regulated investment company are allocated to New Jersey. Expenses for tax preparation, administrative fees and legal fees may be reduced for the taxpayers and tax administrators by implementing the amendment pursuant to the statute.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, recordkeeping or other requirements on small businesses. The amendment applies only to a certain classification of taxpayers. The new subsection is intended only to provide clarification as to how and when to allocate to New Jersey receipts from certain sales and is for the convenience of taxpayers and provides for them a standard allocation method. Any reporting, recordkeeping and other compliance requirements currently imposed on taxpayers by the taxing statute are generally applied without regard to whether or not a particular taxpayer is a business employing more than 100 people.

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

18:7-8.10 Receipts; compensation for services

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

(e) Receipts arising from the sale of management, administration or distribution services to a regulated investment company shall be allocated to New Jersey to the extent that shareholders of the regulated investment company are domiciled in New Jersey in accordance with the procedure prescribed in this subsection.

1. The portion of receipts deemed to arise from services performed within New Jersey shall be determined by multiplying the total of such receipts from the sale of such services by a fraction. The numerator of the fraction is the average of the sum of the beginning of the year and the end of year balance of shares owned by the regulated investment company shareholders domiciled in New Jersey for the regulated investment company's taxable year for Federal income tax purposes which ends within the taxable year of the taxpayer. The denominator of the fraction is the average of the sum of the beginning of the year and end of year balance of shares owned by the regulated investment company shareholders. A separate computation is made to determine the allocation of receipts from each regulated investment company.

2. For the purposes of this section:

i. "Administration services" includes clerical, accounting, book-keeping, data processing, internal auditing, legal and tax services performed for a regulated investment company but only if the provider of such service or services during the taxable year in which such service or services are sold also sells management or distribution services, as defined herein, to such company.

ii. "Distribution services" means the services of advertising, servicing investor accounts (including redemptions), marketing shares or selling shares of a regulated investment company, but, in the case of advertising, servicing investor accounts (including redemptions) or marketing shares, only where such service is performed by a person who is (or was in the case of a closed end company) also engaged in the service of selling such shares. In the case of an open end company, such service of selling shares must be performed pursuant to a contract entered into pursuant to section 15(b) of the Federal Investment Company Act of 1940, as amended.

iii. "Domicile" shall have the meaning ascribed to it under N.J.S.A. 54A:1-20 in the case of an individual and under N.J.S.A. 54A:1-20 in the case of an estate or trust and in the case of a business entity where the actual seat of management or control is located in the State; provided, however, "domicile" shall be presumed to be the shareholder's mailing address on the records of the regulated investment company. In the case of a nominee holding the investment on behalf of its customers, the mailing address of the customer shall be deemed to be the domicile of the shareholder.

iv. "Management services" means the rendering of investment advice to a regulated investment company, making determinations as to when sales and purchases of securities are to be made on behalf of a regulated investment company, or the selling or purchasing of securities constituting assets of a regulated investment company, and related activities but only where such activity or activities are performed pursuant to a contract with the regulated investment company entered into pursuant to section 15(a) of the Federal Investment Company Act of 1940, as amended.

v. "Receipts" shall include amounts received directly from a regulated investment company as well as amounts received directly from the shareholders of such regulated investment company in their capacity as such.

vi. "Regulated investment company" means a regulated investment company as defined in N.J.S.A. 54:10A-4(g) and meets the requirements of Section 851 of the Federal Internal Revenue Code.

(a)

DIVISION OF TAXATION

Sales and Use Tax Receipts

Proposed New Rule: N.J.A.C. 18:24-1.4

Proposed Amendment: N.J.A.C. 18:24-12.5

Authorized By: John R. Baldwin, Director, Division of Taxation.

Authority: N.J.S.A. 54:32B-24.

Proposal Number: PRN 1989-206.

Submit comments by May 31, 1989 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, New Jersey 08646

The agency proposal follows:

Summary

The proposed new rule defines the term "receipt" for the purposes of the Sales and Use Tax Act and provides guidance for persons who need to know the elements of a taxable receipt in specified circumstances.

The taxable receipt is defined by the authorizing statute, N.J.S.A. 54:32B-2(d), and means the price paid for property or services without deduction for expenses of sale or early payment discounts, but excluding the amount of a trade-in credit and the cost of transportation, if any, separately stated to the customer. The rule then goes on to discuss the application of the receipt definition in the case of vendor and consumer Federal excise taxes, vendor expenses, discounts, coupons, trade-ins, transportation charges, interest charges, food stamps and manufacturer's rebates.

N.J.A.C. 18:24-12.5, dealing with the sale of food and drink to enrolled secondary school students under N.J.S.A. 54:32B-8.3 of the Sales and Use Tax Act, is proposed for amendment to provide that the exemption applies to meals purchased by students for cash. Formerly the rule permitted the exemption to sales made under the terms of a contractual arrangement between the post secondary school and the student whereby the student did not pay cash when served. The amendment provides, however, that the vendor/cashier may request student identification at the time of purchase whenever the exemption is claimed.

Social Impact

The proposed new rule and amendment will provide vendors and consumers with a guideline for use in ascertaining the amount of the taxable receipt for sales tax purposes. Thus, the vendors, taxpayers and their advisors will be informed of the relevant provisions of the Sales and Use Tax Act and can structure their sale transactions accordingly. Implementation of the rule and amendment will benefit the public at large by providing clarification of the policies adopted by the Legislature through the enactment of 54:32B-2(d) of the Sales and Use Tax Act in the context of the described circumstances.

Economic Impact

The economic impact of the proposed new rule is significant as it relates to coupon transactions. The decision of the New Jersey Tax Court in Burger King Corp. v. Taxation Div. Director, 9 N.J. Tax 251 (Tax Ct. 1987), overruled a long standing Division of Taxation interpretation of the statutory provision relevant to this rule which included the value of coupons issued by the vendor as part of a taxable receipt. As a result of the court's holding, sales tax revenue will decrease annually by approximately \$10 million.

Other than in the coupon area, the proposed new rule and amendment only reflects the Division's long standing administrative position as it relates to the determination of receipts upon which sales tax is to be computed. Thus, there should be no revenue consequence whatsoever.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rule and amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses. N.J.A.C. 18:24-1.4 only deals with the substantive interpretation of N.J.S.A. 54:32B-2(d) of the Sales and Use Tax Act in various circumstances. N.J.A.C. 18:24-12.5

also provides all vendors with a substantive interpretation of N.J.S.A. 54:32B-8.3 and for their benefit at the time of sale, authorizes them to request a student identification in order to verify the exemption provided by N.J.S.A. 54:32B-8.3

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

18:24-1.4 Receipt defined

(a) "Receipt" means the amount of the sales price of any property and the charge for any service taxable under the Sales and Use Tax Act, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts, but excluding any credit for property of the same kind accepted in part payment and intended for resale, excluding the cost of transportation where such cost is separately stated in the written contract, if any, and on the bill rendered to the purchaser, and excluding the amount of the sales price for which food stamps have been properly tendered in full or in part payment pursuant to the Federal Food Stamp Act of 1977, Pub.L. 95-113 (7 U.S.C. §2011 et seq.).

(b) Excise taxes which are imposed on manufacturers, importers, producers, distributors or vendors are included in the receipt on which sales or use tax is computed, even though the excise tax may be separately stated to the purchaser. Thus, the Federal manufacturer excise taxes imposed on the sale or lease of certain automobiles (gas guzzlers) are included in the taxable receipt as are the excise taxes on tires, sporting goods and firearms.

1. Excise taxes which are imposed on the consumer are excluded from the taxable receipt; for example, the Federal retail excise taxes on heavy trucks and trailers sold at retail.

(c) Expenses billed to a customer but incurred by a vendor in making a sale of taxable goods or services, regardless of whether the expenses are taxable or nontaxable, and regardless of whether the expenses are separately billed to a customer, are not deductible from the receipt on which sales tax is computed.

Example 1: An equipment repairman charges \$20.00 per hour plus certain expenses when on a service call. The customer is billed as follows:

Table with 2 columns: Item, Amount. Rows: Repair time—2 hours @ \$20.00 (\$40.00), Travel time (10.00), Parts (20.00), Meals (5.00), Total Due (\$75.00)

The receipt subject to tax is \$75.00.

Example 2: A photographer contracts with a customer to sell photographs at \$50.00 each in addition to the reimbursement of certain expenses. The customer is billed as follows:

Table with 2 columns: Item, Amount. Rows: Photographs (2) (\$100.00), Model fees (60.00), Meals (10.00), Travel (25.00), Props (Flowers) (5.00), Total Due (\$200.00)

The receipt subject to tax is \$200.00.

(d) Discounts which are given by a vendor for the purpose of encouraging prompt payment on an account, known as "early payment discounts", are not deductible from receipts.

Example: A vendor gives a purchaser a two percent discount for paying the price of a \$100.00 camera within 10 days. The sales tax is to be computed on the taxable receipt of \$100.00 regardless of which method of payment the customer chooses.

Table comparing Discount Method and Full Price Method. Discount Method: \$100.00 Price, 6.00 Tax at 6 percent, \$106.00, 2.00 Discount, \$104.00 Due. Full Price Method: \$100.00 Price, 6.00 Tax at 6 percent, \$106.00 Due.

(e) Discounts which represent a reduction in price, such as a trade discount, volume discount or cash and carry discount, are deductible in computing receipts.

Example 1: A vendor gives a purchaser a 30 percent discount for purchasing 1,000 light bulbs. The taxable receipt will be the discount price. The customer is billed as follows:

1,000 bulbs @ \$0.50	\$500.00
Less 30 percent discount	<u>150.00</u>
	\$350.00
Sales tax at 6 percent	<u>21.00</u>
Due	\$371.00

Example 2: A vendor gives a purchaser a 10 percent cash and carry discount. The taxable receipt will be the discounted price. The customer is billed as follows:

Merchandise	\$50.00
Less 10 percent discount	<u>5.00</u>
	\$45.00
Sales tax at 6 percent	<u>2.70</u>
Due	\$47.70

(f) Where a vendor issues a coupon entitling a purchaser to receive a discount upon presentation, and the vendor receives no reimbursement from any person, the sales tax is due from the purchaser on only the discounted price which is the actual receipt.

Example 1: A store issues a coupon entitling the holder to purchase a product for \$0.10 less than the regular sales price. The retailer would bill as follows:

Regular price	\$1.00
Store coupon	<u>.10</u>
Taxable receipt	\$.90
Sales tax at 6 percent rate	<u>.06</u>
Amount due from purchaser	\$.96

Example 2: A store issues a coupon entitling the holder to receive two items for the price of one. The retailer would bill as follows:

Regular price for one item	\$1.00
Store coupon for free item	<u>1.00</u>
Taxable receipt	\$1.00
Sales tax at 6 percent rate	<u>.06</u>
Amount due from purchaser	\$1.06

(g) Where a vendor issues a coupon, entitling a purchaser to pay a reduced price on an item purchased, and the vendor is reimbursed by a manufacturer, distributor, or other third party, the tax is due on the full regular price of the item. The receipt is composed of the amount paid and the amount of the coupon's stated value.

Example: A store issues a coupon labeled "mfr", entitling the holder to purchase an item for \$1.00 less than the regular purchase price. The retailer would bill as follows:

Regular price	\$10.00
Sales tax at 6 percent rate	<u>.60</u>
	\$10.60
Manufacturer coupon	<u>1.00</u>
Amount due from purchaser	\$ 9.60

(h) Where a manufacturer issues a coupon entitling a purchaser to pay a reduced price on an item purchased, the tax is due on the full regular price of the item. The receipt is composed of the amount paid and the amount of the coupon's stated value. The coupon value reflects the payment or reimbursement by another party to the vendor.

Example: A manufacturer issues a coupon entitling the holder to purchase an item from a retailer for \$0.20 less than the regular purchase price. The retailer would bill as follows:

Regular price	\$1.00
Sales tax at 6 percent rate	<u>.06</u>
	\$1.06
Manufacturer coupon	<u>.20</u>
Amount due from purchaser	\$.86

(i) Where a manufacturer or a vendor issues a coupon involving a reimbursement but does not disclose that fact to the purchaser on the coupon or in an accompanying advertisement, the vendor will collect from the purchaser only the tax due on the reduced price, but will be required to pay the tax applicable to the entire receipt, that is, the amount of the price paid and the reimbursement received from the manufacturer.

(j) Any allowance or credit for property of the same kind accepted in part payment by a vendor on the purchase of tangible personal property and intended for resale by such vendor shall be excluded when arriving at the receipt subject to tax. Only the net sale price of tangible personal property would be subject to tax.

Example 1: An automobile dealer allows a customer \$2,000 for a used automobile, accepted in part payment against the purchase price of \$10,000 for a new automobile. The dealer will hold the used automobile for resale. The customer is billed as follows:

New automobile	\$10,000
Trade in	<u>2,000</u>
Due	\$ 8,000
Receipt subject to tax is \$8,000	

Example 2: A motor vehicle dealer allows a customer \$500.00 for a used boat, accepted in part payment against the purchase price of \$10,000 for a new automobile. A boat is not property of the same kind as an automobile. The customer is billed as follows:

New automobile	\$10,000.00
Sales tax at 6 percent	<u>600.00</u>
	\$10,600.00
Trade in	<u>500.00</u>
Due	\$10,100.00

(k) The cost of transportation of tangible personal property, sold at retail, which is separately stated in the written contract, if any, and on the bill rendered to the purchaser is excluded from the receipt subject to the tax (see N.J.A.C. 18:24-27).

(l) Any charges for credit imposed by a vendor and paid by a purchaser in addition to the purchase price under a designation such as interest, service charge, or finance charge is not deemed to be part of the sales price of tangible personal property or charge for services rendered. Such charges are consideration for the extension of credit and shall not be included in the receipt subject to sales tax.

Example: A vendor sells furniture for \$1,000 and charges 1½ percent interest per month on the outstanding balance. Only the \$1,000 is a receipt subject to tax.

1. The imposition of charges by a credit card company deducted from a participating vendor's account are charges for financial services rendered. Such charges have no bearing on the computation of receipts subject to tax.

Example: A vendor sells furniture for \$1,000. The purchaser uses a bank credit card. The bank, when remitting to the vendor, deducts a five percent service charge (\$50.00). The vendor is required to charge and remit tax on \$1,000.

2. Interest paid by a lessor on the purchase of tangible personal property intended to be leased to a customer is an expenditure of the lessor and is to be included in the receipt subject to tax.

Example: A lessor on credit purchases equipment for a lessee. The agreement provides that the lessee is to pay \$100.00 per month for equipment rented and \$7.00 per month to reimburse the lessor for interest paid. The tax is to be collected on \$107.00.

(m) The amount of the sales price of items of property paid in or eligible for payment with food stamps issued in accordance with the Federal Food Stamp Act of 1977, Pub.L. 96-113 (7 U.S.C. §2011 et seq.) is excluded from taxable receipts.

1. On food stamp eligible purchases, otherwise taxable items will be exempt from sales tax when food stamps are presented in full payment or when cash is submitted with food stamps as a part payment. Nontaxable food, food products and non-carbonated beverages exempt from sales tax under N.J.S.A. 54:32B-8.2 remain exempt whether or not purchased with food stamps.

Example: If a purchaser presents \$10.00 in food stamps and \$32.00 in cash as payment for \$42.00 worth of food stamp eligible items, the entire \$42.00 is exempt from tax. Under these facts, the exemption

would apply even if the \$42.00 worth of food stampable items consisted of food stamp eligible but sales taxable food and beverages, such as candy and soda. The purchase of items which are not food stampable remains subject to sales tax.

(n) A manufacturer's rebate, whether or not paid directly to the purchaser, is not deductible from the receipt on which sales tax is computed.

Example: An automobile dealer agrees to sell an automobile to a customer for \$10,000.00. As a sales incentive, the manufacturer agrees to give a rebate of \$500.00 to a customer who purchases an automobile during the month of December. The customer elects to have the rebate paid to the dealer. The customer is billed as follows:

Sales price	\$10,000.00
Sales tax at 6 percent	600.00
Due	<u>\$10,600.00</u>
Rebate	<u>500.00</u>
Net Cost to Purchaser	\$10,100.00

18:24-12.5 Receipts exempt from sales tax

(a) The tax imposed on the sale of food and drink shall not apply to the following:

1.-4. (No change.)

5. Food or drink sold to an enrolled post secondary school student who is not a participant in a student food plan as described in (a)4 above at a restaurant, tavern or other establishment on the premises of the school of his or her enrollment or in a fraternity, sorority or eating club operated in connection therewith. A student purchasing food or drink otherwise subject to the tax can be required to exhibit to the vendor/cashier a valid student identification card at the time of purchase in order to document the exemption.

Renumber existing 5 to 7 as 6 to 8 (No change in text.)

(b) (No change.)

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Public Financing of General Election for Governor

Proposed New Rules: 19:25-15.29, 15.48, 15.49, 15.50, 15.51, 15.52, 15.53, 15.54, 15.55, 15.56, 15.57, 15.58 and 15.64

Proposed Amendments: 19:25-15.3, 15.4, 15.5, 15.6, 15.7, 15.9, 15.11, 15.12, 15.14, 15.16, 15.17, 15.19, 15.22, 15.23 and 15.26

Proposed Recodifications and Amendments: 19:25-15.30, 15.31, 15.32, 15.35, 15.37, 15.38, 15.39, 15.42, 15.43, 15.44, 15.45, 15.59, and 15.61

Authorized By: Election Law Enforcement Commission,

Frederick M. Herrmann, Ph.D., Executive Director.

Authority: N.J.S.A. 19:44A-38.

Proposal Number: PRN 1989-204.

A public hearing concerning the proposed new rules and amendments will be held on:

May 16, 1989 at 10:00 A.M.
 Election Law Enforcement Commission
 28 West State Street, Suite 1215
 Trenton, New Jersey

Submit written comments by May 31, 1989 to:
 Nedda Gold Massar, Esq.
 Election Law Enforcement Commission
 National State Bank Building, 12th Floor
 CN-185
 Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary

The Election Law Enforcement Commission (hereafter, "the Commission" or "ELEC") proposes these new rules and amendments concerning the public financing of candidates for Governor in general elections to implement statutory changes made on January 21, 1989 by P.L. 1989, c.4, amending the gubernatorial public financing provisions of the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter, "the Act"). Most of the proposed changes are similar if not identical to rules adopted by emergency for gubernatorial primary elections (see 21 N.J.R. 788(b)).

Among the changes are:

1. Amendments of pertinent sections of N.J.A.C. 19:25-15 to implement an increase of the contribution limit from \$800.00 to \$1,500, an increase in the candidate threshold to qualify for receipt of public matching funds from \$50,000 to \$150,000 of eligible contributions deposited and expended, an increase in the general election expenditure limit to \$5 million, an increase in the maximum public funds allowable to a general election candidate to \$3.3 million, and an increase of the contribution limit for an inaugural event from \$250.00 to \$500.00.

2. Existing N.J.A.C. 19:25-15.3, Definitions for this subchapter, has been amended to expand the definition of "qualified candidate" to include the new debate participation requirement and to reflect the deadline for notifying the Commission of intent to participate in public financing. Obligations of the candidates and private organizations sponsoring debates are clarified by three new definitions which have been added. "Debate sponsor" and "interactive general election debate" provide uniformity in describing the new debate requirement. "Statement of agreement" describes the agreement to debate, which must be signed by a candidate who wishes to receive public matching funds.

3. N.J.A.C. 19:25-15.5, Pre-candidacy activity, has been amended to implement the statutory changes made by Section 8 of P.L. 1989, c.4.

4. N.J.A.C. 19:25-15.6, Contribution limits; applicability, has been amended to add the "continuing political committee" entity as subject to the contribution limit to implement the addition of that term to N.J.S.A. 19:44A-29 (see Section 5 of P.L. 1989, c.4). For the same reason, the term has been added to the exclusion contained in the proposed definition of "person" in N.J.A.C. 19:25-15.3. See also proposed N.J.A.C. 19:25-15.14.

5. N.J.A.C. 19:25-15.9, Candidates deemed non-participating; effect, had been amended to state the failure of a gubernatorial candidate to apply for or to prove qualification to apply for public funds by September 1 in a year preceding a gubernatorial general election precludes that candidate from receipt of public funds in the pending general election. N.J.A.C. 19:25-15.17, Matching of funds, has been amended to specify the actions which a candidate must complete by the September 1 general election filing deadline in order to qualify for receipt of public funds. The actions include signing a statement of agreement to participate in required debates, and either qualifying for receipt of public funds or providing proof of qualification to receive public funds by the September 1 deadline. Proposed new rule N.J.A.C. 19:25-15.48, Candidate statement of qualification before participation in public financing, describes the method for reporting the receipt and spending of \$150,000 that must be filed by a candidate no later than September 1 in a year preceding the gubernatorial election if that candidate intends to apply for public funds after September 1. Proposed new rule N.J.A.C. 19:25-15.49, Statement of candidates electing to participate in debates, describes the prerequisites which must be met by a non-publicly financed candidate who wishes to qualify to participate in the general election debates. A non-participating candidate must notify the Commission by September 1 of the intent to participate in the debates and must file a report by that date containing evidence that \$150,000 in contributions has been received and expended.

6. A new subsection (j) has been added to N.J.A.C. 19:25-15.17, Matching of funds, to implement the requirement that each submission for public matching funds submitted by a candidate contain a minimum of \$12,500 of contributions eligible for match.

7. Proposed new rule N.J.A.C. 19:25-15.29, Coordinated expenditures, is identical to the proposed rule for gubernatorial primary elections (see 21 N.J.R. 704(a)). The purpose is to regulate communication expenditures made by a non-gubernatorial candidate which are undertaken with the consent, consultation or cooperation of a gubernatorial candidate and promote that gubernatorial candidate's campaign. Under such circumstances, a portion of the cost of the communication, that is, advertising paid by the non-gubernatorial candidate would be allocated or charged against the expenditure limit of a gubernatorial candidate participating in public financing (see N.J.S.A. 19:44A-7, as amended by Section 2, P.L. 1989, c.4).

8. A new subsection (b) has been added to N.J.A.C. 19:25-15.31, Computation of value of goods and services, to specify that the costs of political communications promoting a gubernatorial candidate and consented to by the gubernatorial candidate shall be valued in the same method as other contributed goods or services. The proposal is identical to the proposed rule for gubernatorial primary elections (see 21 N.J.R. 703(b)).

9. N.J.A.C. 19:25-15.39, County and municipal committee expenditures; reports, has been amended to implement the statutory changes in the amounts county and municipal political party committees are permitted to spend in a general election on behalf of a gubernatorial candidate (see Section 5 of P.L. 1989, c.4, amending N.J.S.A. 19:44A-29). Also, subsection (c) has been added to specify that such expenditures must be allocated and counted in determining a gubernatorial candidate's compliance with the expenditure limit (see N.J.S.A. 19:44A-7, amended by Section 2, P.L. 1989, c.4).

10. Subsection (d) has been added to N.J.A.C. 19:25-15.44, Prepared statement on behalf of candidate, to provide standards for reimbursing counties for the cost of printing and mailing ballot statements (see N.J.S.A. 19:44A-37). The Commission will not make any reimbursement if adequate funds are not appropriated by the Governor and the Legislature to permit full reimbursement to all counties.

11. Proposed new rule N.J.A.C. 19:25-15.50, Application to sponsor debate, lists and clarifies the newly enacted statutory criteria for debate sponsor applicants and requires written applications to be filed by July 1 by private organizations seeking to be considered by the Commission to sponsor one or both of the general election debates. A debate sponsor applicant must agree not to endorse for election any candidate until the completion of any debate sponsored by the applicant. Proposed new rule N.J.A.C. 19:25-15.51, Selection of debate sponsor, reiterates the statutory deadline for Commission selection of debate sponsors and explains the Commission's authority to assign debate responsibilities. In proposed new rule N.J.A.C. 19:25-15.52, Dates, times, and location of debates, the Commission requires debate sponsors to provide written notice of debate details and schedules. At subsection (b), the new statutory general election debate time constraints are repeated with provisions at subsection (c) for postponement of the second debate upon vote of the majority of participating candidates. At subsections (d) and (e), the Commission retains the power to review sponsors' debate calendars to ensure that no scheduling conflicts occur and to require new debate schedules should there be a conflict in date or time. In proposed new rule N.J.A.C. 19:25-15.53, Rules for conduct of debate, the statutory one hour debate length minimum is repeated and procedures are outlined for debate sponsors to promulgate and circulate rules to the representatives of the candidates. Provision is made for distribution of any changes made to the rules.

12. Proposed new rules N.J.A.C. 19:25-15.54, 15.55, 15.56, 15.57 and 15.58 explain the process for the filing and handling of a complaint alleging failure of a general election candidate to participate in a required debate. In proposed new rule N.J.A.C. 19:25-15.54, Complaint alleging failure to participate in debate, the contents and service requirements for a complaint alleging failure to participate in a debate are described. The Commission's authority to hear complaints for failure to participate in a debate or debates is described in proposed new rule N.J.A.C. 19:25-15.55, Temporary cessation of distribution of public funds. This new section requires that the Commission cease the review and certification of any pending public fund applications if it is determined that reasonable cause exists to believe that a candidate may have failed to participate in a required debate. Proposed new rule N.J.A.C. 19:25-15.56, Response to a complaint for failure to participate in a debate or debates, lists the time in which a complaint for failure to participate must be answered and describes the required contents of the response. Service requirements are also listed. A proposed new rule, N.J.A.C. 19:25-15.57, Conduct of the hearing, outlines the procedures and rules of evidence which will apply in any hearing for failure to participate in any debate. Representation of participants is described at subsection (a) and the Uniform Administrative Procedure Rules at N.J.A.C. 1:1 are adopted to govern the hearings at subsection (b). Additional rules governing the hearing are set out in subsections (c) through (f). Proposed new rule N.J.A.C. 19:25-15.58, Final decision of nonparticipation, explains at subsections (a) and (b) the process by which the Commission renders a decision of nonparticipation and notifies the participants of its decision. At new subsections (c) and (d), the penalty process of candidate repayment to ELEC of public monies already distributed is explained.

13. Proposed new rule N.J.A.C. 19:25-15.64, Contributions and loans prior to candidacy, is in substance identical to existing N.J.A.C. 19:25-16.12 for primary elections. The rule has been added to the general

election rules because gubernatorial candidates who did not participate in the preceding primary election (that is, independent candidates) must be subject to the same rule as are general election candidates who won primary elections.

Pursuant to its authority under Section 12 of P.L. 1989, c.4, the Commission intends these new rules and amendments to be effective upon the filing of their notice of adoption with the Office of Administrative Law. The Commission contemplates such filing will occur on or about June 5, 1989 in order that the new rules and amendments will be effective by the date of the June 6, 1989 primary election.

Social Impact

The Commission believes that the social impact of the proposed amendments and new rules is beneficial. They implement the recently enacted statutory changes to the public financing provisions of the Act which will promote candidate participation in the program. The proposed rules and amendments implement the new debate provisions of the Act which require a publicly-financed candidate to participate in two general election debates as a condition of receipt of public funds. The public will be served by this provision which encourages discussion among candidates. Also, the new rules regarding political communications and coordinated expenditures will benefit gubernatorial candidates and the public by clarifying compliance with the contribution and expenditure limits of the Act.

Economic Impact

The Commission perceives that the economic impact of the proposed rules and amendments is minimal. Candidates and the public are informed of the new limits and thresholds in the public financing law and of the enhanced availability of public funds to qualified candidates. Public moneys are safeguarded by provisions for recapturing public funds in the event of a finding of a candidate's failure to debate. Although there may be minimal additional recordkeeping costs associated with the increased qualification and continuing submission thresholds, these will be more than offset by the greater amount of public funds available to a qualified candidate participating in public financing. A non-publicly-financed candidate who elects to participate in the general election debates may incur minimal costs associated with preparation of a statement of qualification to debate, but preparation of such information must ultimately be required to complete campaign cycle reports.

Regulatory Flexibility Statement

The proposed new rules and amendments affect the campaign financing of gubernatorial candidates in a general election, and as such do not affect, impact or impose reporting, recordkeeping or other compliance requirements on small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

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

19:25-15.3 Definitions for this subchapter

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

"Candidate" means anyone who has filed a nominating petition, or has filed a form D-1 with the [commission] **Commission**, or has solicited contributions or made or incurred expenditures on behalf of his or her candidacy, or has allowed others to solicit contributions or make or incur expenditures on behalf of his or her candidacy for election to the office of Governor of New Jersey in any general election for which the Legislature makes an appropriation for public funding.

...

"Contribution eligible for match" means contributions from one contributor to be matched from public funds on a two-for-one basis. No contribution which must be or is intended by the contributor or the recipient to be refunded or repaid at any time, no loan obtained pursuant to N.J.S.A. 19:44A-44, no amount of the candidate's own funds in the aggregate in excess of [\$800.00] **\$1,500**, no in-kind contribution and no other moneys received by the candidate, his or her campaign treasurer, or deputy campaign treasurer, except those contributions described in N.J.S.A. 19:44A-29(a) shall be deemed contributions eligible for match. Funds received by an individual who

is "testing the waters" may be matched when the individual becomes a candidate if such contributions meet all the requirements of the regulations.

"Debate sponsor" means the private organization or organizations to which the Commission has delegated the responsibility for conducting one or both of the televised interactive general election debates.

"Interactive general election debate" means the moderated reciprocal discussion of issues among the candidates for the office of Governor which involves responses by the candidates to questions posed by the representative or representatives of the sponsor organization.

"Non-participating candidate" means any candidate who does not make application for public funding in a [primary] general election pursuant to N.J.A.C. 19:25-15.17, or who is not a "qualified candidate" as that term is defined [by N.J.A.C. 19:25-15.3] in this section. In no case shall a candidate who qualified for and receives any public funding for a general election be subsequently deemed a non-participating candidate for that election.

"Person" includes corporations, associations and labor unions. For purposes of this subchapter, person does not include a political committee or continuing political committee. A spouse of any person is deemed to be a separate person.

"Political committee" means any two or more persons acting jointly, or any corporation, partnership or any other incorporated or unincorporated association which is organized to, or does aid or promote the nomination, election, [of] or defeat of a candidate for the office of Governor, but shall not mean a duly constituted State, county or municipal committee of a political party. [When used in this subchapter, "political committee" shall include "continuing political committee" as defined in N.J.S.A. 19:44A-3(n)(2).]

"Qualified candidate" means:

1. Any candidate for election to the office of Governor whose name appears on the general election ballot and who has deposited and expended [\$50,000] **\$150,000** pursuant to N.J.S.A. 19:44A-32; and who, not later than September 1 preceding a general election in which the office of Governor is to be filled, notifies the Election Law Enforcement Commission in writing that the candidate intends that application will be made on the candidate's behalf for monies for general election campaign expenses pursuant to N.J.S.A. 19:44A-33, and signs a statement of agreement, in a form to be prescribed by the Commission, to participate in two interactive gubernatorial general election debates; or

2. Any candidate for election to the office of Governor whose name does not appear on the general election ballot, but who has deposited and expended [\$50,000] **\$150,000** pursuant to N.J.S.A. 19:44A-32 and who, not later than September 1 preceding a general election in which the office of Governor is to be filled, notifies the Election Law Enforcement Commission in writing that the candidate intends that application will be made on the candidate's behalf for monies for general election campaign expenses pursuant to N.J.S.A. 19:44A-33, and signs a statement of agreement, in a form to be prescribed by the Commission, to participate in two interactive gubernatorial general election debates.

"Statement of agreement" means a written declaration by a candidate for election to the office of Governor who intends that application will be made on that candidate's behalf to receive monies for general election campaign expenses pursuant to N.J.S.A. 19:44A-33 that the candidate undertakes to abide by the terms of any rules established by any private organization sponsoring a gubernatorial general election debate. The statement of agreement shall include an acknowledgment of notice to the candidate who signs it that failure on that candidate's part to participate in either of the gubernatorial general election debates may be cause for termination of the payment of such monies on the candidate's behalf and for the imposition of liability for the return to the Commission of such monies as may previously have been so paid.

19:25-15.4 Appointment of treasurers and depositories

(a)(b) (No change.)

(c) No political committee, other than the principal campaign committee designated pursuant to (a) above, may contribute to any candidate or expend on behalf of such candidate more than [\$800.00] **\$1,500**.

19:25-15.5 Pre-candidacy activity

(a) All funds or other benefits received and payments made pursuant to N.J.A.C. 19:25-3.1 by an individual, or a committee in his or her behalf, solely for the purpose of determining whether that individual should become a candidate (for example, "testing the waters") are not contributions or expenditures. All funds so received shall be deposited in a separate depository established solely for that purpose. The individual shall keep records of all such funds received and payments made.

(b) (No change.)

(c) In the event the individual on whose behalf funds are received and payments made solely for the purpose of determining whether the individual should become a candidate does in fact become a candidate, [the separate depository established pursuant to N.J.A.C. 19:25-15.5(a) above may be designated by that individual as or incorporated with the matching fund account under N.J.A.C. 19:25-15.17(b), provided that the account and all the contributions deposited in it meet all of the requirements of N.J.A.C. 19:25-15.17(b).] the funds received and payments made are contributions subject to the contribution limit contained in N.J.A.C. 19:25-15.12 and expenditures subject to the expenditure limit contained in N.J.A.C. 19:25-15.11(a)3 and shall be reported with the first report filed by the candidate or the campaign committee of the candidate, regardless of the date the funds were received or the payments made. This exemption does not apply to funds received or payments made for general public political advertising; nor does this exemption apply to funds received or payments made for activities designed to amass campaign funds that would be spent after the individual becomes a candidate. In no instance shall permissible activities conducted solely for the purpose of determining whether an individual will become a candidate be confined or limited on the basis of total funds received or payments made for such purpose.

(d) The separate depository established pursuant to (a) above may be designated by that individual as or incorporated with the matching fund account under N.J.A.C. 19:25-15.17(b), provided that the account and all the contributions deposited in it meet all of the requirements of N.J.A.C. 19:25-15.17(b).

19:25-15.6 Contribution limits; applicability

(a) No candidate for the office of Governor, whether or not intending to participate in public funding, and no campaign treasurer or deputy campaign treasurer of such candidate shall knowingly accept from any person, candidate, [or] political committee, or continuing political committee any contribution in aid of the candidacy of or in behalf of such candidate in the aggregate in excess of [\$800.00] **\$1,500** in any general election.

(b) No [state] State committee, and no campaign treasurer or deputy campaign treasurer of such [state] State committee, shall knowingly accept from any person, candidate, [or] political committee, or continuing political committee any contribution in aid of the candidacy of or in behalf of any candidate for the office of Governor in the aggregate in excess of [\$800.00] **\$1,500** in any general election, whether or not such candidate intends to participate in public funding.

19:25-15.7 Separately maintained primary and general bank accounts

(a) Any candidate may establish and designate to the [commission] Commission a depository bank account, and/or a matching fund account pursuant to N.J.A.C. 19:25-15.17(b), for a gubernatorial general election and may deposit contributions in such respective accounts at any time after designation. Such general election bank accounts may be established prior to the date of the primary election for nomination for the office of Governor, and prior to the conclusion of any such candidate's primary election campaign. However, if a candidate establishes general election bank accounts prior to or

on the date of the primary election for the office of Governor, and such candidate is also a candidate in such primary election, no moneys deposited in such candidate's general election accounts may be transferred or expended until the day following such primary election and may not be expended at any time for primary election expenses.

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

19:25-15.9 Candidates deemed non-participating; effect

(a) Any candidate who does not by **September 1 preceding a general election in which the office of Governor is to be filled** apply for public funding in a general election pursuant to N.J.A.C. 19:25-15.17 shall be deemed non-participating in public funding of that general election **and shall not receive public funds on his or her behalf.**

(b) Any candidate deemed non-participating pursuant to this section shall not receive public funds on behalf of his or her campaign for any contribution received during the period of time the candidate was deemed non-participating unless the candidate was in compliance with this subchapter including all of the limitations contained in N.J.A.C. 19:25-15.11 during the time the candidate was deemed non-participating and thereafter.]

19:25-15.10 Non-participating candidates; generally

(a) A non-participating candidate is subject to the [\$800.00] **\$1,500** limitation on contributions from a person, [or] political committee **or continuing political committee**, pursuant to N.J.S.A. 19:44A-29.

(b) A non-participating candidate is subject to the [\$800.00] **\$1,500** limit on guarantors of bank loans, except if the guarantor is the non-participating candidate himself or herself.

(c) (No change.)

19:25-15.11 Limitations on participating candidates

(a) Each candidate intending to participate in public funding, in addition to any other requirement imposed by the act (N.J.S.A. 19:44A-1 et seq.) or [these regulations] **this subchapter** is subject to the following limitations:

1. (No change.)

2. No candidate, or his or her campaign treasurer or deputy campaign treasurer, shall borrow an amount that at any one time exceeds \$50,000 in the aggregate, and such loan must be repaid in full not later than 20 days prior to the general election for which the loan was made from moneys accepted or allocated pursuant to N.J.S.A. 19:44A-29. Certification of such repayment shall be made by the borrower to the [commission] **Commission** in accordance with N.J.A.C. 19:25-[15.29] **15.30**.

3. The amount which any qualified candidate may spend in aid of his or her candidacy shall not exceed [0.70 for each voter who voted in the last preceding general election in a presidential year in New Jersey] **\$5,000,000**, which amount shall include all expenditures for testing the waters activity prior to candidacy. Such amount shall not include expenditures listed in N.J.A.C. 19:25-15.26.

4. Contributions by any candidate in excess of [\$800.00] **\$1,500** from his or her own funds in aid of his or her candidacy shall not be deposited in a matching fund account and shall not be calculated in determining if such candidate is a qualified candidate eligible for public matching funds.

19:25-15.12 Who may or may not contribute; generally

(a) No person, [or] political committee, **or continuing political committee** other than a candidate contributing his or her own funds to his or her campaign, shall make any contribution to any candidate, the candidate's campaign treasurer or deputy campaign treasurer, or to any other person or committee, in aid of the candidacy of or in behalf of a candidate, whether or not participating in public funding, for election to the office of Governor in a general election, in the aggregate in excess of [\$800.00] **\$1,500**. Any such contribution in excess of [\$800.00] **\$1,500** must be promptly returned to the contributor, and evidence of repayment shall be submitted to the [commission] **Commission**. [Notwithstanding the provision of N.J.S.A. 19:44A-3(i) and N.J.A.C. 19:25-1.7 excluding "continuing political committees" from the meaning of "political committees", the term

"political committee" as it appears in N.J.S.A. 19:44A(a) and herein shall include "continuing political committees" as defined in N.J.S.A. 19:44A-3(n) (2).]

(b) (No change.)

(c) A corporation, association or labor organization or any subsidiary, affiliate, branch, division, department or local unit of any such corporation, association or labor organization shall not make any contribution to or on behalf of a candidate which, when added to any other contribution by any related or affiliated corporation, association or labor organization, exceeds [\$800.00] **\$1,500** in the aggregate. Whether such corporation, association or labor organization is related or affiliated shall depend on the circumstances existing at the time of such contribution, including, but not by way of limitation, the degree of control or common ownership with related or affiliated corporations, associations or labor organizations, the source and control of funds used for such contributions and the degree to which the decisions whether to contribute to what candidate and in what amount are independent decisions.

19:25-15.14 Contributions eligible for match; generally

(a) (No change.)

(b) Only contributions in cash or by check, money order or negotiable instrument shall be contributions eligible for match. Loans shall not be eligible for match. In-kind contributions shall not be eligible for match. In-kind contributions shall not be eligible for match, but will count toward the individual contribution limit of [\$800.00] **\$1,500** and the overall expenditure limit contained in N.J.S.A. 19:44A-7 except for expenses not subject to expenditure limits pursuant to N.J.A.C. 19:25-15.26. The total of all contributions eligible for match from any person or political committee, **or continuing political committee** shall not exceed [\$800.00] **\$1,500** in the aggregate.

(c) A maximum of [\$800.00] **\$1,500** in the aggregate of a candidate's own funds may be deposited in the matching fund account.

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

19:25-15.16 Limitation on contributions eligible for match

(a) Any contributions in the form of the purchase price paid for an item with significant intrinsic and enduring value (such as a watch) shall be eligible for match only to the extent the purchase price exceeds the fair market value of the item or benefit conferred on the contributor, and only the excess will be included in calculating the [\$800.00] **\$1,500** contribution limit.

(b) A contribution in the form of the purchase price paid for admission to a testimonial affair as defined in N.J.A.C. 19:25-1.7 shall be a contribution eligible for match and for purposes of the [800.00] **\$1,500** limitation.

(c) (No change.)

19:25-15.17 Matching of funds

(a) [Each candidate seeking to qualify for public funding shall so notify the commission in writing of such intention.] **Any candidate seeking to qualify for receipt of public matching funds shall not later than September 1 preceding a general election in which the office of Governor is to be filled file with the Commission:**

1. A statement of agreement in a form prescribed by the Commission to participate in the series of two interactive gubernatorial general election debates; and

2. Either of the following:

i. A certified application for receipt of public matching funds pursuant to this section; or

ii. A statement of qualification to participate in public financing pursuant to N.J.A.C. 19:25-15.48.

(b) (No change.)

(c) A candidate seeking to become eligible to receive matching funds shall certify to the [commission] **Commission** in a written statement signed by the candidate that he or she is a candidate for Governor in a general election and that he or she has received and deposited into his or her matching fund account contributions eligible for match of at least [\$50,000] **\$150,000** from persons, [or] political committees, **or continuing political committees** each of whose contributions in the aggregate [do] **does not exceed [\$800.00] \$1,500**, and

that at least [\$50,000] **\$150,000** of such contributions have been expended. "Expended" for this purpose shall mean disbursed or irrevocably committed by a legally binding commitment for expenditure in the campaign and ultimately disbursed.

(d) The statement referred to in (c) above shall include an original and one photocopy of a typed or printed list of contributors showing each contributor's full name and full mailing address (number, street, city, state, zip code), the date of receipt of each contribution by the candidate and of the deposit into the matching fund account, the dollar amount of each contribution submitted for match, and the total amount of all contributions submitted for match. The list of contributors shall be segregated by deposit. The statement shall also include a typed or printed list of contributors of contributions not eligible or submitted for match and any other receipt (for example, in-kind contributions, contributions intended to be repaid, or interest on invested funds), showing each contributor's full name and full mailing address (number, street, city, state, zip code), the date of receipt of each such contribution by the candidate and the dollar amount of each such contribution. The statement shall also include an original and one photocopy of a list of repayment by the candidate of any contribution, including any loan described under N.J.A.C. 19:25-[15.29] **15.30**.

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

(g) The initial certification shall include two photocopies of checks, receipted bills, contracts or the like, as proof of the expenditure of at least [\$50,000] **\$150,000**.

(h)-(i) (No change.)

(j) **Each submission for public matching fund payments following the date on which a candidate is determined to be a qualified candidate shall contain no less than \$12,500 of contributions eligible for match. Upon determination by the Commission that each submission contains no less than \$12,500 of contributions eligible for match, public matching funds will be awarded based upon the total amount of contributions determined to be eligible for match.**

19:25-15.19 Matching of State committee contributions; submission dates

(a) The campaign treasurer or deputy campaign treasurer of any candidate seeking matching funds must, on the dates of submission provided in N.J.A.C. 19:25-15.18, deliver to the [commission] **Commission** any statement of contributors or expenditures and photocopies received from any State committee pursuant to N.J.A.C. 19:25-[15.36] **15.37** and must so certify to the [commission] **Commission**. In the event no contribution from a State committee has been received and therefore no deposit made of such State committee contributions in such candidate's matching fund account, the campaign treasurer or deputy campaign treasurer shall so certify to the [commission] **Commission**.

(b) No submission or application for public funds pursuant to N.J.A.C. 19:25-15.18 will be considered by the [commission] **Commission** unless accompanied by written certification in compliance with (a) above.

19:25-15.22 Receipt of public funds limitation

(a) No public funds shall be deposited by the [commission] **Commission** in the public fund account of any qualified candidate on or before the date of the primary election for nomination for the office of Governor of New Jersey immediately preceding the general election for the same office.

(b) The maximum amount which any qualified candidate may receive from public funds shall not exceed [\$0.40 for each voter who voted in New Jersey in the last preceding general election in a presidential year] **\$3,300,000**.

19:25-15.23 Receipt of public funds; procedure

The [commission] **Commission** shall certify to the Treasurer of New Jersey the amount to be disbursed to the [commission] **Commission** for the public fund account of each candidate. The Treasurer shall then deliver such amount to the [commission] **Commission**.

19:25-15.26 Expenses not subject to expenditure limits

(a) The following expenditures by a qualified candidate shall not be subject to the expenditure limit described in N.J.A.C. 19:25-15.11(a)3:

1.-3.(No change.)

4. Election night celebration or event expenses as defined in N.J.A.C. 19:25-[15.46(c)] **15.47(c)**.

19:25-15.29 Coordinated expenditures

(a) **A communication expenditure by a candidate other than a gubernatorial candidate is a coordinated expenditure of the gubernatorial candidate and is properly allocable against the expenditure limit of the gubernatorial candidate (N.J.S.A. 19:44A-7) if:**

1. **The communication makes unambiguous reference to the gubernatorial candidate in an audio, video, printed or visual format; and**

2. **The gubernatorial candidate or his or her campaign has consented to or authorized the coordinated communication, or if the communication has been made with the cooperation or prior consent of, or in consultation with or at the request or suggestion of the gubernatorial candidate or his or her campaign.**

(b) **Where a coordinated expenditure exists pursuant to (a) above, a minimum of 15 percent of all expenses related to the communication shall be allocated against the expenditure limit of the gubernatorial candidate. A percentage greater than 15 percent of the expenses related to the communication shall be allocated against the expenditure limit of the gubernatorial candidate if the effect of the communication was to aid or promote the gubernatorial candidate in a proportion greater than 15 percent.**

19:25-[15.29] **15.30** Borrowing of funds; repayment

Any candidate, the candidate's campaign treasurer or deputy campaign treasurer may borrow funds from any national or State bank, provided that no person or political committee other than the candidate or the State committee may in any way endorse or guarantee such loan in the aggregate in excess of the [\$800.00] **\$1,500** contribution limit. Except for a non-participating candidate guaranteeing a loan to his or her campaign, the amount so borrowed shall not at any one time in the aggregate exceed \$50,000 and must be repaid in full by such candidate or his or her campaign treasurer or deputy campaign treasurer from moneys accepted or allocated pursuant to N.J.S.A. 19:44A-29 not later than 20 days prior to the general election. Certification of such repayment shall be made by the borrower to the [commission] **Commission** not later than 15 days prior to the date of the general election. In the event of the failure of the borrower to repay timely the full amount of the loan or to certify properly such repayment to the [commission] **Commission**, all payment of public funds to such candidate shall promptly cease and the [commission] **Commission** shall take action as directed by the act to prohibit the expenditure by the candidate of moneys received from the fund and any other moneys received by him or her in aid of his or her candidacy in such general election.

19:25-[15.30] **15.31** Computation of value of goods and services

(a) Goods and services shall, for purposes of the reports required to be filed under the act and for purposes of the expenditure limitation contained in section 7 of the act (N.J.S.A. 19:44A-7) where applicable, be valued by the reasonable commercial value of such goods and services to the candidate, whether or not the cost or value of such goods or services to the contributor or other provider of those services is higher or lower than such reasonable commercial value.

1. Example 1: Candidate Y, a candidate for the office of Governor who has chosen to accept public funding, obtains the use of a helicopter for travel of the candidate for campaign purposes. By agreement with the owner of the helicopter, the campaign committee for the candidate will pay \$500.00 per day, which represents the cost to the owner of the maintenance and operation of the helicopter. The reasonable commercial value of the use of the helicopter is [\$900.00] **\$1,000** per day. In this example, the amount of \$500.00 paid by the campaign committee of the candidate to the owner for use of the helicopter is not includable as an expenditure for purposes of the expenditure limitations contained in section 7 of the act (N.J.S.A. 19:44A-7). The difference between the \$500.00 actually paid for use of the helicopter and the reasonable commercial value normally charged by the owner for the use of the helicopter, represents a contribution from the owner of the helicopter to the candidate in the amount of [\$400.00] **\$500.00**. The candidate could obtain the use

of the helicopter under this arrangement from a lawful contributor for campaign purposes for not more than [two] **three** days. If the candidate obtained the use of the helicopter for [three] **four** days under this arrangement, the owner of the helicopter would have made an unlawful contribution to the candidacy of the candidate, since the aggregate of the contributions [(\$1,200)] **(\$2,000)** from that contributor in this instance would have exceeded [\$800.00] **\$1,500**.

2. Example 2: Candidate Y in example 1 wishes to obtain the use of the helicopter from the owner for three days, and the campaign committee for the candidate pays to the owner the reasonable commercial value of [\$900.00] **\$1,000** for each day, or a total of [\$2,700] **\$3,000**. The amount paid to the owner is not an expenditure within the expenditure limitation contained in section 7 of the act (N.J.S.A. 19:44A-7). On these facts the owner has made no contribution to the candidate.

3. (No change.)

(b) **The costs of a political communication as defined in N.J.A.C. 19:25-11.10 which aids or promotes a candidate for Governor, and is undertaken, made or circulated with the cooperation or consent of the candidate, shall be reported by the candidate in the same manner as the receipt of any goods and services, and shall be valued for the purposes of the contribution limit in N.J.A.C. 19:25-15.6 and the expenditure limit in N.J.A.C. 19:25-15.11(a)3 in the same manner as any other contributed goods or services.**

19:25-[15.31] **15.32** Establishment of State committee account; contribution limit

(a) (No change.)

(b) Upon or after establishment of a State committee account by a State committee, such State committee may allocate and deposit certain contributions received by it in such account. Only a contribution of up to [\$800.00] **\$1,500**, or up to [\$800.00] **\$1,500** of a contribution in excess of [\$800.00] **\$1,500** may be so deposited, and only if such deposit does not result in the contributor exceeding a contribution of [\$800.00] **\$1,500** in the aggregate to such or on behalf of such candidate.

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

19:25-[15.32] **15.33** (No change in text.)

19:25-[15.33] **15.34** (No change in text.)

19:25-[15.34] **15.35** Notice by State committee to contributor

(a) The campaign treasurer or deputy campaign treasurer of any State committee depositing any contribution in a State committee account of such State committee must give written notice of such deposit to the contributor within 48 hours of such deposit, and such notice shall contain the following information:

1. (No change.)

2. The allocated contribution counts toward the [\$800.00] **\$1,500** the contributor may contribute to a candidate for the office of Governor;

3.-5. (No change.)

19:25-[15.35] **15.36** (No change in text.)

19:25-[15.36] **15.37** Certification and delivery of statements

(a) The campaign treasurer or deputy campaign treasurer of a State committee that has established a State committee account in behalf of a candidate shall certify to the campaign treasurer or deputy campaign treasurer of such candidate, and to the [commission] **Commission**, the correctness of the statements and photocopies prepared pursuant to N.J.A.C. 19:25-[15.35] **15.36**.

(b) (No change.)

(c) The statements and photocopies to be delivered pursuant to (b) above shall include all contributions and expenditures during the periods of time as follows:

1. The statement of contributors prepared pursuant to N.J.A.C. 19:25-[15.35(a)] **15.36(a)** shall include all contributions deposited in the State committee account from the date of the most previous statement of contributors delivered to the candidate or, if no previous statement has been delivered, from the date the State committee account was established, until the date preceding the transfer to the candidate;

2. The statement of expenditures prepared pursuant to N.J.A.C. 19:25-[15.35(b)] **15.36(b)** shall include all expenditures from the date of the most previous statement of expenditures delivered to the candidate or, if no previous statement has been delivered, from the date the State committee account was established, until the date preceding the transfer to the candidate;

3. Photocopies of checks prepared pursuant to N.J.A.C. 19:25-[15.35(c)] **15.36(c)** shall pertain to contributions listed in the statement of contributors.

19:25-[15.37] **15.38** Transfer of deposits; certification

(a) A State committee may transfer deposits made on behalf of a candidate in its State committee account to the matching fund account of such candidate, provided certified statements and photocopies relating to such deposits have been delivered to the treasurer or deputy campaign treasurer of such candidate as provided in N.J.A.C. 19:25-[15.36] **15.37**.

(b) At the time of making a transfer pursuant to (a) above, the campaign treasurer or deputy campaign treasurer of the State committee shall certify in writing to the campaign treasurer or deputy campaign treasurer of the candidate in whose matching fund account a transfer is to be made, and certify to the [commission] **Commission**, that the deposit includes only contributions eligible for match and does not include any contribution which must be or is intended by the contributor or recipient to be refunded or repaid at any time and that no contribution by any county or municipal committee is included.

19:25-[15.38] **15.39** County and municipal committee expenditures; reports

(a) [All of the county committees and municipal committees of any political party in the State may collectively make an expenditure or expenditures in the aggregate of \$100,000 in aid of the candidacy of or in behalf of any candidate for election to the office of Governor in a general election, except the county committee and all of the municipal committees in the same county may not collectively make an expenditure or expenditures in the aggregate in excess of \$10,000 in aid of the candidacy or in behalf of any such candidate.] **The county committee of a political party in a county and the municipal committees of that political party in the same county may make an expenditure or expenditures in the aggregate of \$10,000 in aid of the candidacy of or in behalf of the candidate for election to the office of Governor in a general election.**

(b) A candidate or his or her campaign treasurer or deputy campaign treasurer shall determine the exact amount that individual county committees or municipal committees may contribute in aid of the candidacy of or in behalf of such candidate, and shall file a report of such determination with the commission no later than the [seventh] **eleventh** day prior to the general election being funded.

(c) **Any expenditures in aid of the candidacy of a candidate by the county committee of a political party and the municipal committees of that political party in the same county shall be included in determining the total expenditures of such candidate subject to the expenditure limit contained in N.J.A.C. 19:25-15.11(a)3.**

19:25-[15.39] **15.40** (No change in text.)

19:25-[15.40] **15.41** (No change in text.)

19:25-[15.41] **15.42** Maintenance of records; audit

(a) The campaign treasurer or deputy campaign treasurer of each candidate and each State committee shall retain all written instruments, checks, bank statements and all other records of contributions and expenditures, including originals or photocopies of all documents and instruments submitted to the [commission] **Commission** relating to the general election for a period of not less than four years after submission of the final report for the general election.

(b) Each candidate, campaign treasurer or deputy campaign treasurer, or State committee campaign treasurer or deputy campaign treasurer, shall furnish to the [commission] **Commission** any books and records, including bank records for all accounts and supporting documentation for matching fund submissions as may be requested by the [commission] **Commission** for purposes of an audit or other [commission] **Commission** examination.

19:25-[15.42] **15.43** Disclosure of information

The statements and certifications submitted by a candidate in accordance with N.J.A.C. 19:25-15.17 shall not be public records and shall not be available for public inspection; provided, however the [commission] **Commission** shall from time to time publish a listing which shall contain the information included in the statements and certifications for each contribution approved for match, except that it shall not include the name, address or amount of contribution of any contributor whose contributions in the aggregate are \$100.00 or less unless the candidate authorizes such disclosure in writing.

19:25-[15.43] **15.44** Prepared statement on behalf of candidate

(a) Each candidate shall be entitled to have a statement in English and in Spanish submitted by the candidate to the [commission] **Commission**, printed and mailed by each county clerk with the sample ballot to each registered voter in the county, together with a short explanation from the [commission] **Commission** that such statements are provided pursuant to the act and [these regulations] **this subchapter** to assist the voters in making a determination among the candidates for the office of Governor.

(b) Each candidate who wishes such a statement mailed on his or her behalf shall submit to the [commission] **Commission**, on forms to be provided by the [commission] **Commission**, his or her proposed statement in English and in Spanish which shall not exceed 500 words in length. The statement shall be submitted to the [commission] **Commission** on or before the 80th day prior to the date on which the general election is to be held.

(c) On or before the 45th day prior to the date on which the general election is to be held, the [commission] **Commission** shall supply each county clerk with the text of the statement received from each candidate for election to the office of Governor.

(d) On or before the 45th day prior to the date on which the general election is to be held, the **Commission** shall determine the portion of the cost of printing and mailing of such ballot statements which it will reimburse to all counties and shall notify all county clerks of the amount of the reimbursement. Such reimbursements shall not be made if adequate funds are not appropriated by the Governor and the Legislature to reimburse all counties fully.

19:25-[15.44] **15.45** Post-election contribution; post-election payment of expenses

(a) Any person, [or] political committee, or continuing political committee otherwise eligible to make political contributions to a candidate or a State committee may make a contribution in aid of the candidacy of a candidate after the date of such general election provided such person or political committee does not exceed [\$800.00] **\$1,500** in the aggregate for such general election.

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

19:25-[15.45] **15.46** (No change in text.)19:25-[15.46] **15.47** (No change in text.)

19:25-15.48 Candidate statement of qualification before participation in public financing

(a) A candidate who intends to apply to the Commission for public matching funds on a date later than September 1 preceding a general election for the office of Governor must on or before September 1 preceding the general election for Governor file:

1. A certified statement of qualification containing evidence that \$150,000 has been deposited and expended pursuant to N.J.S.A. 19:44A-32 for gubernatorial general election campaign expenses. Evidence that \$150,000 has been deposited and expended shall be filed with the Commission on September 1 preceding a general election for the office of Governor and in a form to be prescribed by the Commission.

2. Each contribution submitted in the report required by (a)1 above as evidence that \$150,000 in contributions has been deposited must be accompanied by a written statement which shall identify the individual making the contribution by full name and full mailing address (number, street, city, state, zip code), the name of the candidate, the amount and date of receipt of the contribution, and shall bear the signature of the contributor. The requirement of such written statement will be deemed to be satisfied in the case where a contribution is made by means of

a check, money order or other negotiable instrument payable on demand and to the order for, or specially endorsed without qualification to, the candidate or to his campaign committee, if such check, money order or instrument contains all of the foregoing information.

3. Each disbursement submitted in the report required by (a)1 above as evidence that \$150,000 has been expended for primary election expenses shall include two photocopies of checks, receipted bills, contracts, or similar documents as evidence of the expenditure of at least \$150,000.

(b) The reports filed pursuant to (a) above to establish qualification shall not be available for public inspection.

(c) Any report required to be filed pursuant to (a) above cannot be handwritten.

19:25-15.49 Statement of candidates electing to participate in debates.

(a) A candidate who has not by September 1 preceding a general election applied to the Commission for public matching funds may elect to participate in the series of interactive gubernatorial general election debates by:

1. Notifying the Commission in writing no later than September 1 preceding the general election for the office of Governor of his or her intent to participate in the series of gubernatorial general election debates; and

2. Filing a statement of qualification containing evidence that \$150,000 has been deposited and expended pursuant to N.J.S.A. 19:44A-32 for gubernatorial general election expenses. The statement of qualification shall contain the same information as that required at N.J.A.C. 19:25-15.48(a).

(b) The reports filed pursuant to (a) above to establish qualification for participation in gubernatorial general election debates shall not be available for public inspection.

(c) Any report required to be filed pursuant to (a) above cannot be handwritten.

19:25-15.50 Application to sponsor debates

(a) To be eligible for selection by the Commission to sponsor one or both of the interactive gubernatorial general election debates, a private organization:

1. Must be unaffiliated with any political party or with any holder of or candidate for public office;

2. Must not have endorsed any candidate in the pending general election for the office of Governor and must agree not to make any such endorsement until the completion of any debate sponsored by the organization; and

3. Must have previously sponsored one of more televised debates for Statewide office in New Jersey since 1976.

(b) Written applications by organizations to sponsor one or both of the gubernatorial general election debates shall be submitted to the Commission on a form provided by the Commission not later than July 1 of any year in which a general election is held for the office of Governor. The written application shall set forth plans of the applicant for television and media coverage.

19:25-15.51 Selection of debate sponsor

(a) Based upon the criteria in N.J.A.C. 19:25-15.50(a) above, the Commission shall select the private organization or organizations to sponsor the gubernatorial general election debates within 30 calendar days of the July 1 deadline for receipt of sponsor applications and shall provide written notification to the organization or organizations so selected.

(b) The Commission shall provide each debate sponsor it has selected with a list of candidates who are required to participate in the gubernatorial general election debates or who have elected to participate.

19:25-15.52 Dates, times, and location of debates

(a) Not later than five calendar days after receipt of notification from the Commission that an organization has been selected to sponsor one or both of the gubernatorial general election debates, each sponsoring organization shall:

1. Submit a written calendar to the Commission and to all candidates who are required to or have elected to participate in the debates contain-

ing the date, time, location, and plans for television and other media coverage of the debate or debates assigned to the sponsor; and

2. Submit to the Commission a description of the physical facilities available at the debate site or sites for use by television, broadcast and other media personnel.

(b) The debate date or dates selected by each sponsoring organization in the written calendar required in (a) above shall be no earlier than the third Tuesday following the first Monday in September of the year in which a general election is held for the office of Governor and no later than the 11th day prior to the pending general election.

(c) Upon the vote of a majority of the candidates participating in the second general election debate that an emergency condition exists requiring postponement of that debate, the debate sponsor shall:

1. Reschedule the second debate to occur no later than the second calendar day preceding the general election; and

2. Take whatever actions are necessary to notify all participating candidates and the Commission of the date, time, and location of the rescheduled debate.

i. Actions to notify the participating candidates and the Commission of the rescheduled debate shall include, but not be limited to, telephone contact and first class mail, return receipt requested.

(d) The Commission shall review and approve the debate calendars submitted by the debate sponsoring organizations pursuant to (a) above prior to the occurrence of any general election debate and shall create a master debate calendar which ensures compliance with the date requirements of (b) above and ensures that the two debates are scheduled for different dates.

(e) In the event that the Commission determines in its review pursuant to (d) above that a conflict exists in the two scheduled debates, the Commission shall direct the debate sponsors to submit a revised debate schedule or schedules within two calendar days containing new debate dates and times which eliminate the conflict.

19:25-15.53 Rules for conduct of debates

(a) Each debate between or among candidates for the office of Governor shall be of at least one hour's duration.

(b) Promulgation of the rules for the conduct of each debate shall be the responsibility of the private organization selected by the Commission as the sponsor of each debate and such rules shall not be made final without consultation with a representative designated by each of the participating candidates.

(c) Immediately upon notification of its selection as a sponsor and no later than five calendar days before each debate is to occur, the sponsor shall forward the written rules for conduct of the interactive general election debate to the representatives of the participating candidates, to the Commission, and to the relevant candidates who are required to or have elected to participate in the debate.

(d) The candidates participating in the debate and the Commission shall be notified by the sponsor in writing of any modifications or changes to the rules for conduct of a debate no later than two calendar days before the debate is scheduled to occur.

19:25-15.54 Complaint alleging failure to participate in debate

(a) Any complaint filed with the Commission alleging failure of a general election candidate to participate in a required debate shall:

1. Be in writing and be verified; and
2. Contain a detailed statement alleging with specificity all facts known to the complainant pertinent to the allegation of failure to participate in a debate.

(b) Service of a complaint alleging failure to participate in a general election debate shall be made by the complainant in person or by certified mail, return receipt requested upon the respondent candidate, the debate sponsor, and any person named in the complaint.

19:25-15.55 Temporary cessation of distribution of public funds

(a) Upon receipt by the Commission of a verified complaint alleging failure to participate in a debate, the Commission shall meet as soon as practicable to determine whether there is reasonable cause to believe the respondent candidate may have failed to participate as required in a general election debate.

(b) If it is determined by majority vote of the Commission that there is reasonable cause to believe that a candidate may have failed to participate in a debate as required, the Commission shall:

1. Cease the review and certification of any public fund amounts which have been requested by the respondent candidate from the Commission and which have not previously been approved; and

2. Schedule a hearing before it on the complaint to determine whether the respondent candidate has failed to participate in a debate as alleged.

(c) The Commission shall as soon as practicable notify the respondent candidate in writing of the actions it has taken pursuant to (b) above.

19:25-15.56 Response to complaint for failure to participate in a debate or debates

(a) Within five calendar days of service of the complaint upon the respondent candidate, he or she shall respond to the complaint in a written, verified answer which:

1. Admits or denies each of the factual allegations contained in the complaint; and

2. Sets forth any affirmative defenses to the allegations contained in the complaint including all facts known to the respondent candidate pertinent to any such affirmative defense.

3. Justification and excuse shall be deemed to be affirmative defenses for the purposes of this subsection.

(b) Service of an answer shall be made by the respondent candidate in person or by certified mail, return receipt requested, upon the complainant, the Commission, the debate sponsor, and any person named in the complaint or response.

19:25-15.57 Conduct of the hearing

(a) The complainant and the respondent candidate shall appear at the hearing. Other interested persons may appear as permitted by N.J.A.C. 1:1-16 and may be represented as permitted by N.J.A.C. 1:1-5.

(b) The hearing shall be governed by the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) The complainant shall have the burden of proving non-participation by a preponderance of the credible evidence, and the respondent candidate charged with the failure to participate in a debate shall have the burden of proving justification or excuse by a preponderance of the credible evidence.

(d) At the request of the complainant or respondent candidate, subpoenas shall be issued to compel the attendance of witnesses to testify at the hearing held to determine a candidate's failure to participate in a debate.

(e) The Commission may refer the matter for hearing to the Office of Administrative Law as a contested case pursuant to the provisions of the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(f) The Commission shall have the authority to assess the costs associated with a hearing held pursuant to this section against any complainant, respondent or interested person permitted to appear.

19:25-15.58 Final decision of non-participation

(a) At the conclusion of a hearing, the Commission shall determine by majority vote:

1. Whether a candidate required to participate in a general election debate has failed to do so;

2. Whether the failure to participate occurred under circumstances which were beyond the control of the candidate and of such a nature that a reasonable person would find the failure justifiable or excusable.

(b) The Commission shall serve its written decision upon the participants or upon their legal representatives as soon as practicable.

(c) If it is determined by the Commission that the respondent candidate failed to participate in a general election debate without reasonable justification or excuse, the Commission shall:

1. Calculate the total amount of public moneys distributed by the Commission pursuant to N.J.S.A. 19:44A-33 to the respondent candidate for campaign expenses;

2. Notify the respondent candidate and campaign treasurer in writing of the total dollar amount of the liability of the campaign for repayment and of the interest due upon the amount at the rate of one per cent for each month or fractional part of a month during which the liability remains unpaid; and

3. Cease certification of any further public fund amounts to the candidate.

d. Within 10 calendar days of receipt of notification of the amount of repayment required to the Commission, the respondent candidate and his or her campaign shall submit to the Commission a written schedule for repayment of public funds which specifies dates and amount of repayment installments.

19:25-[15.47] **15.59** Inaugural event contribution limit; reporting
 (a) No person, candidate, [or] political committee, or continuing political committee otherwise eligible to make political contributions, shall make any contribution or contributions for the purpose of any gubernatorial inaugural fund raising event or events in the aggregate in excess of [\$250.00] **\$500.00**. A contributor to a gubernatorial inaugural fund raising event may make a contribution not to exceed [\$250.00] **\$500.00** in the aggregate notwithstanding any contribution by such contributor to a candidate for election to the office of Governor.

(b) No person or committee sponsoring a gubernatorial inaugural fund raising event shall accept for deposit in any bank account maintained for the purposes of such event any contribution or contributions from a contributor in the aggregate in excess of [\$250.00] **\$500.00**.

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

19:25-[15.48] **15.60** (No change in text.)

19:25-[15.49] **15.61** Inaugural event contributions from affiliated corporations or unions

A corporation, association or labor organization or any subsidiary, affiliate, branch, division, department or local unit of any such corporation, association or labor organization shall not make any contribution to a gubernatorial fund raising event which, when added to any other contribution by any related or affiliated corporation, association or labor organization, exceeds [\$250.00] **\$500.00** in the aggregate. Whether such corporation, association or labor organization is related or affiliated shall depend on the circumstances existing at the time of such contribution, including, but not by way of limitation, the degree of control or common ownership with related or affiliated corporations, associations or labor organizations, the source and control of funds used for such contributions and the degree to which the decisions whether or not to contribute, to what candidate and in what amount are independent decisions.

19:25-[15.50] **15.62** (No change in text.)

19:25-[15.51] **15.63** (No change in text.)

19:25-15.64 Contributions and loans prior to candidacy

(a) Each candidate for the office of Governor who did not participate in the preceding primary election, whether or not intending to participate in public funding of the general election for Governor, shall certify to the Commission in writing within 10 days after the date of commencement of his or her candidacy that:

1. The candidate did not have a "testing the waters" account; or
 2. The candidate did have a "testing the waters" account. In that event, the candidate shall notify the Commission whether the "testing the waters" account is to be designated as the matching fund account and whether contributions from the "testing the waters" account are to be deposited into the matching fund account.

3. No contributions in excess of \$1,500 in the aggregate from a person, political committee, or continuing political committee had theretofore been received for pre-candidacy "testing the waters" activity; or contributions in excess of \$1,500 in the aggregate have been received for that purpose, and the amount of each contribution in excess of \$1,500 in the aggregate has been returned to the contributor. The certification shall include:

i. A list of all contributors who contributed more than \$1,500 and the dates and amounts of all such contributions; and

ii. Written evidence such as photocopy of check, showing that such excess amounts have been returned to the contributor.

(b) In addition to any other penalty provided by law, a candidate failing to make the certification in (a)2 above with respect to excess contributions will not be eligible to receive matching funds.

(c) Each candidate who receives contributions for pre-candidacy "testing the waters" activity and intends to qualify such contributions for matching funds must designate the "testing the waters" account as the matching fund account, or deposit such contributions in the matching fund account, within 10 days after the date of commencement of the candidacy. Each such candidate must also comply with the other provisions of N.J.A.C. 19:25-15.17, Matching of funds. Except as otherwise provided in (d) below, contributions for pre-candidacy "testing the waters" activity not so deposited will not be eligible for match.

(d) Contributions spent for pre-candidacy "testing the waters" activity will be eligible to be matched with public funds if the candidate submits the information required by N.J.A.C. 19:25-15.17, Matching of funds, and, at the same time, in lieu of evidence of deposit of such contributions in a matching fund account pursuant to N.J.A.C. 19:25-15.17(b), submits evidence of deposit in a "testing the waters" account established pursuant to N.J.A.C. 19:25-15.5. Contributions expended which have not been deposited in the matching fund account established pursuant to N.J.A.C. 19:25-15.17, Matching of funds, will not be eligible to be matched with public funds.

(e) Any candidate who contributed or expended for pre-candidacy "testing the waters" activity an amount in excess of \$25,000 from his or her own funds shall reimburse his or her campaign account within 10 days after the date of commencement of the candidacy, such amount in excess of \$25,000 so contributed and expended, and shall certify to the Commission that such reimbursement has been made.

(f) Any candidate who borrowed an amount in the aggregate in excess of \$50,000 shall repay within 10 days after the date of commencement of the candidacy such amount in excess of \$50,000 so borrowed, and shall certify to the Commission that such excess amount has been repaid.

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF REGULATORY SERVICES

Jersey Fresh Quality Grading Premium Program Products and Manner of Use

Adopted Amendments: N.J.A.C. 2:71-2.2 and 2.4

Proposed: March 6, 1989 at 21 N.J.R. 591(a).

Adopted: April 6, 1989 by the State Board of Agriculture, and Arthur R. Brown, Jr., Secretary.

Filed: April 6, 1989 as R.1989 d.235, 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. 4:10-3, 4:10-13 and 4:10-20.

Effective Date: May 1, 1989.

Expiration Date: July 8, 1993.

Summary of Public Comments and Agency Responses:

The Department of Agriculture received 20 to 25 comments from farmers requesting that five products be added to the list of quality graded products and the Premium Program.

COMMENT: Requested to be placed in the quality grading program were cherry tomatoes, broccoli greens, mustard greens, turnip greens and swiss chard (see adoption elsewhere in this issue of the New Jersey Register). Cherry tomatoes were requested to be added to the premium program.

RESPONSE: The Department of Agriculture is delighted with these requests for additions to the program and is happy to add them to the program. Cherry tomatoes have been added to the premium program at N.J.A.C. 2:71-2.4(b).

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*).

2:71-2.2 Use of the "Jersey Fresh Quality Grading Program" and "Jersey Fresh Quality Premium Program" Logos (referred to as the "logos") on containers of certain fresh fruits and vegetables

(a) (No change.)

(b) The configuration of the Jersey Fresh Quality Grading Program Logo and the Jersey Quality Grading Premium Program Logo are as follows:

(c) Only those persons, firms, partnerships, corporations or associations licensed by the New Jersey Department of Agriculture pursuant to N.J.S.A. 4:10-5 to use the Jersey Fresh Quality Grading Program Logo or Premium Logo shall be permitted to attach the printed label to or have it printed upon a panel of the container in which the agricultural commodity is to be marketed or to employ its use in advertising or in any manner whatsoever. All containers are subject to the approval of the New Jersey Department of Agriculture.

(d) Any person, firm, partnership, corporation or association wishing to employ the Jersey Fresh logo to be used in marketing certain New Jersey produced agricultural commodities shall make application to the New Jersey Department of Agriculture for a license and registration number. The application shall be made in writing, upon a form provided by the Department for this purpose. The application shall reveal such information as is deemed necessary for the enforcement of the Jersey Fresh Quality Grading or Premium logo program. Information given in the application shall be held confidential and not subject to review or reproduction under the provisions of N.J.S.A. 47:1A-1 et seq. (P.L. 1963, c.73).

(e) Any person, firm, partnership, corporation or cooperative wishing to transfer ownership of containers bearing a "logo" to licensed registrants shall make application to the New Jersey Department of Agriculture for a license. The application shall be made in

writing, upon a form provided by the Department. Information given in the application shall be held confidential and not subject to review or reproduction under the provisions of N.J.S.A. 47:1A-1 et seq. (P.L. 1963, c.73).

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

(a) Only the following products may be packed in the Quality Grading Program: Sweet anise (fennel), apples, asparagus, blueberries, cabbage, green corn, cucumbers (pickling type), eggplants, endive, escarole, herbs (fresh), leeks, big Boston lettuce, iceberg lettuce, nectarines, okra, common green onions, parsley, peaches, sweet peppers, sweet potatoes, white potatoes, raspberries, romaine, summer squash, fall and winter type squash and tomatoes (fresh market).

(b) Only blueberries, eggplant, peaches, sweet peppers (green, red and yellow bell type), *cherry tomatoes* and tomatoes may be identified by the Premium "Logo" if graded and packed in accordance with the requirements in N.J.A.C. 2:71-2.5, with the exception that the applicable tolerances will be one-half of those specified for the Jersey Fresh Quality Grading Program.

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

AGENCY NOTE: A proposed amendment to N.J.A.C. 2:71-2.4(a) adding a number of products to those eligible for the Quality Grading Program was published in the February 6, 1989 New Jersey Register at 21 N.J.R. 227(a). Upon adoption of both amendments, the new provisions will be combined.

(b)

DIVISION OF REGULATORY SERVICES

Jersey Fresh Quality Grading Program Products and Manner of Use

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

Proposed: February 6, 1989 at 21 N.J.R. 227(a).

Adopted: April 6, 1989 by the State Board of Agriculture and Arthur R. Brown, Jr., Secretary.

Filed: April 6, 1989 as R.1989 d.234, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: May 1, 1989.

Expiration Date: July 8, 1993.

Summary of Public Comments and Agency Responses:

The Department of Agriculture received 20 to 25 comments from farmers requesting five products be added to the list of quality graded products and the Premium Program.

COMMENT: Requested to be placed in the quality grading program were cherry tomatoes, broccoli greens, mustard greens, turnip greens and swiss chard. Cherry tomatoes were requested to be added to the premium program (see adoption elsewhere in this issue of the New Jersey Register).

RESPONSE: The Department of Agriculture is delighted with these requests for additions to the program and is happy to add them to the program.

The Department of Agriculture published in the March 6, 1989 New Jersey Register, at 21 N.J.R. 591(a), proposed amendments to the Jersey Fresh Quality Premium Program. Those amendments, including amendments to N.J.A.C. 2:71-2.4, are adopted elsewhere in this issue of the Register. The amendment adopted therein to N.J.A.C. 2:71-2.4 are reflected as unchanged text in the adoption text which follows:

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

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

(a) Only the following products may be packed in the Quality Grading Program: sweet anise (fennel), apples, asparagus, beets (bunched), beets (topped), blueberries, ***broccoli greens,*** cabbage, cabbage (Chinese), collard greens, green corn, cubanelle peppers, cubanelle peppers (red), cucumbers, cucumbers (cukes), cucumbers (pickling type), cucumbers (slicing type), eggplants, endive, escarole, herbs (fresh), kale, bib Boston lettuce, iceberg lettuce, lettuce (green leaf and red leaf), ***mustard greens,*** nectarines, okra, common green onions, parsley, peaches, sweet peppers, sweet peppers (yellow, bell type), sweet potatoes, white potatoes, radishes (bunched), raspberries, romaine, shallots (topped), strawberries, summer squash, fall and winter type squash*, **swiss chard,*** *[and]* tomatoes (fresh market), ***cherry tomatoes,*** turnips (topped), ***turnip greens,*** and watermelon (sugar baby).

(b) Only blueberries, eggplant, peaches, sweet peppers (green, red and yellow bell type), cherry tomatoes and tomatoes may be identified by the premium "Logo" if graded and packed in accordance with the requirements in N.J.A.C. 2:71-2.5, with the exception that the applicable tolerances will be one-half of those specified for the Jersey Fresh Quality Grading Program.

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

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

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

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

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

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

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

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

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

6. Broccoli greens shall be U.S. No. 1 grade. The pack shall be for a minimum of 16 bunches per container. All containers shall have at least a fairly tight pack.

[6.]**7. Cabbage (Chinese) shall consist of heads of similar varietal characteristics which are fairly firm and are not withered, puffy or burst, and which are free from soft rot seedstems, are not materially affected by discoloration, freezing, disease, insects and mechanical or other injury. Stems shall be cut so that they extend no more than one-half inch beyond the point of attachment of the outermost leaves. Containers shall be packed for nine to 10, 10 to 12, or 12 to 14 heads per container. All containers shall have a tight pack. Tolerance—In order to allow for variations incident to proper grading and handling not more than a total of 10 percent, by count, in any lot may fail to meet the the required specifications, including not more than five percent for defects seriously affecting the lot including not more than two percent for soft rot. For application of tolerances, see N.J.A.C. 2:76-2.6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27. Mustard Greens shall be U.S. No. 1 grade. The pack shall be for a minimum of 16 bunches per container. All containers shall have at least a fairly tight pack.

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

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

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

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

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

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

*[32.]**34.* Sweet peppers (Yellow, Bell Type) shall be U.S. No. 1, as specified by the U.S. Standard for Sweet Peppers, for defects and tolerances with 90 percent of the peppers showing full yellow

or orange color. Minimum size and/or count pack shall be as specified under the Sweet Peppers (Green or Red, Bell Type) requirements. All containers shall be at least fairly well filled.

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

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

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

*[36.]**38.* Raspberries shall be U.S. No. 1 grade. Berries shall be well colored. Individual cups shall be well filled.

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

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

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

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

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

***44. Swiss chard shall consist of leaves of similar varietal characteristics which are fresh, fairly tender, fairly clean and which are free from decay and not materially affected by coarse stalks and seed stems, discoloration, freezing, foreign material, disease, insects, mechanical or other means. The pack shall be for a minimum of 16 bunches per container. All containers shall have at least a fairly tight pack. In order to allow for variations incident to proper grading and handling, the following tolerances are provided: not more than a total of 10 percent, by weight, in any lot may fail to meet the required specifications, including not more than five percent for defects seriously affecting the**

lot, including not more than two percent for decay. Individual packages in a lot may contain not more than one and one-half times the tolerance specified, provided that the average for the entire lot is within the tolerance specified.*

*[42.]***45.** Tomatoes (fresh market) shall be U.S. No. 1 grade "Mixed Colors". Containers shall be marked with either "Maximum Large" or "Extra Large" or "Large" in accordance with the following size specifications: "Maximum Large" shall have a three and fifteen thirty-second inch minimum diameter; "Extra Large" shall have a two and twenty-eight thirty-second inch minimum diameter and three and fifteen thirty-second inch maximum diameter; "Large" shall have a two and seventeen thirty-second inch minimum diameter and two and twenty-eight thirty-second inch maximum diameter. Containers shall also be marked as follows, in accordance with the facts, "Large to Extra Large" or "Extra Large and Larger". ***Cherry tomatoes shall be U.S. No. 1 grade, color turning to full red.*** Containers shall be at least fairly well filled.

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

47. Turnip Greens shall be U.S. No. 1 grade. The pack shall be for a minimum of 16 bunches per container. All containers shall have at least a fairly tight pack.

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

2:71-2.6 Definitions

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

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

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

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

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

"Tight" means, in the case of iceberg lettuce and Big Boston lettuce, that the layers are completely and tightly filled without injury to the heads. In the case of green corn, when packed in crates the package is filled sufficiently to prevent any movement of the product within the package and it has the proper bulge without causing bruised kernels. In the case of asparagus (loose), cabbage (domestic and Chinese), fennel, leeks, parsley and romaine, that the packages

are sufficiently well filled so as to prevent the product from moving in the container, but not overly filled so that injury to the product results.

"Well filled" means, in the case of blueberries*, **cherry tomatoes*** and raspberries, that the *[berries are]* ***fruit be*** one-quarter to one-half inch above the rim of the cup.

"Well trimmed" means, in the case of asparagus, that at least two-thirds of the butt of the stalk is smoothly trimmed in a plane approximately parallel to the bottom of the container and that the butt is not stringy or frayed. In the case of endive and escarole, that the roots are neatly cut near the point of attachment of the outer leaf stems. In the case of romaine, that the stem is trimmed off close to the point of attachment of the outer leaves. In the case of cabbage, that the head shall not have more than four wrapper leaves. In the case of Sweet Anise (Fennel), that not more than one coarse outer branch is left on each side of the bulb to protect the tender inside portion, and the portion of the root remaining is not more than one-half inch in length. Tops may be either full length or cut back to not less than 10 inches except that not more than five of the outer branches may be cut back to less than 10 inches if necessary to facilitate proper packing, but not more than three of these may be on the same side of the bulb. In the case of shallots, that the tops are no longer than one-quarter inch.

BANKING

(a)

DIVISION OF BANKING

Investments

Adopted New Rules: N.J.A.C. 3:11

Proposed: February 21, 1989 at 21 N.J.R. 367(a).

Adopted: March 30, 1989 by Mary Little Parell, Commissioner, Department of Banking.

Filed: April 7, 1989 as R.1989 d.236, **without change.**

Authority: N.J.S.A. 17:2-10; 17:9A-24.13, 25(12), 25.2, 25.3, 26(7), 60, 62H, and 182.1 through 182.3.

Effective Date: May 1, 1989.

Expiration Date: May 1, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

N.J.A.C. 3:11 expired on March 19, 1989, pursuant to Executive Order No. 66(1978). Pursuant to N.J.A.C. 1:30-4.4(f), the rules proposed for re-adoption, as amended, are herein adopted as new rules.

Full text of the new rules proposed for re-adoption appears in the New Jersey Administrative Code at N.J.A.C. 3:11.

Full text of the amendment to the new rules proposed for re-adoption follows.

SUBCHAPTER 2. APPROVED SUBSIDIARIES

3:11-2.1 Exclusion from liabilities of controlling corporation

(a) A list of subsidiaries which have capital, surplus and undivided profits aggregating \$5,000,000 or more, and are approved as subsidiaries whose total liabilities to a bank shall be excluded from the total liabilities to the bank of the corporation which owns or controls a majority of the outstanding capital stock entitled to vote for the election of directors of such subsidiaries, shall be kept on file in the office of the Commissioner of Banking. The total liabilities of such controlling corporation may also be excluded from the total liabilities of such subsidiaries when considering limitations on liability to the bank.

(b) A list of subsidiaries approved under the above subsection follows:

1. Bell Telephone Company of Pennsylvania, The;
2. Chesapeake & Potomac Telephone Company of Maryland;
3. C.I.T. Financial Corporation;

4. Creole Petroleum Corporation;
5. Duluth, Missabe & Iron Range Railroad Company;
6. General Motors Acceptance Corporation;
7. ILC Industries, Inc. (Subsidiary of Rapid American Corp.);
8. Illinois Bell Telephone Company;
9. Motors Insurance Corporation;
10. New England Telephone & Telegraph Company;
11. New Jersey Bell Telephone Company;
12. New York Telephone Company;
13. Pennsylvania Company;
14. Remington Arms Company, Inc.;
15. Sears Roebuck Acceptance Corporation;
16. Union Railroad Company;
17. Wagner Electric Corporation; and
18. Western Electric Company, Inc.

COMMUNITY AFFAIRS

(a)

OFFICE OF THE COMMISSIONER

Organization of the Department of Community Affairs

Adopted New Rules: N.J.A.C. 5:2-1.1 through 1.3

Adopted Amendments and Recodification: N.J.A.C. 5:2-2.1 through 2.3 (formerly N.J.A.C. 5:29-1.1 through 1.3)

Recodification: N.J.A.C. 5:2-1.1 through 1.6 as N.J.A.C. 5:51-1.1 through 1.6.

Adopted: April 4, 1989, by Anthony M. Villane Jr., D.D.S., Commissioner, Department of Community Affairs.

Filed: April 10, 1989, as R. 1989, d. 237.

Authority: N.J.S.A. 52:27D-3 and 52:14B-3 and 4.

Effective Date: April 10, 1989.

Expiration Date: April 10, 1994, N.J.A.C. 5:2, September 1, 1993, N.J.A.C. 5:51.

These proposed new rules and amendments are organizational in nature and, as such, in accordance with N.J.S.A. 52:14B-4(b), may be adopted without prior notice or hearing and are effective upon filing.

New chapter N.J.A.C. (recodified from N.J.A.C. 5:2-1) 5:51 is to be retitled "Office of Recreation."

N.J.A.C. 5:29 is to be retitled "Landlord-Tenant Relations."

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

SUBCHAPTER 1. ORGANIZATION OF THE DEPARTMENT

5:2-1.1 Office of the Commissioner; Divisions

(a) The Department of Community Affairs includes the Office of the Commissioner and the Divisions of Housing and Development, Community Resources, Women, Aging and Local Government Services.

(b) The Office of the Commissioner includes the Commissioner, the Deputy Commissioner, two Assistant Commissioners, and the following subordinate offices and personnel who report either to the Commissioner or the Deputy Commissioner:

1. Reporting to the Commissioner:
 - i. Chief of Staff (including the Public Information Office);
 - ii. Office of the Municipal and County Ombudsman (including Internal Control);
 - iii. Affirmative Action Officer; and
 - iv. Office of Hispanic Affairs.
2. Reporting to the Deputy Commissioner:
 - i. Director of Administration;
 - ii. Director of Personnel;
 - iii. Director of Planning (including the Bayshore Development Office);
 - iv. Director of Legislative Policy and Planning; and

v. Chief of Legislative Analysis and Administrative Practice;
(b) The Division of Housing and Development consists of the Director's Office and the following elements: Construction Code, Fire Safety, Housing Programs, and Inspection and Licensing.

1. The Construction Code Element includes the Assistant Director's Office and the following bureaus:

- i. Homeowner Protection (including New Home Warranty and Builders' Registration and Planned Real Estate Development);
- ii. Technical Assistance;
- iii. Code Services;
- iv. Regulatory Affairs;
- v. Construction Project Review; and
- vi. Local Code Enforcement.

2. The Fire Safety Element consists of the Assistant Director's Office and the Bureau of Fire Safety.

3. The Housing Programs Element includes the Assistant Director's Office, the Office of Housing Advocacy, the Affordable Housing Management Program, and the following bureaus:

- i. Housing Services (including the Rental Assistance, Homelessness Prevention, and Moderate Rehabilitation programs); and
- ii. Housing and Community Development (including the Housing Demonstration Program, the Neighborhood Preservation Program, the Neighborhood Preservation Balanced Housing Program, the Homeless Shelters Program and the Small Cities Program).

4. The Inspection and Licensing Element includes the Assistant Director's Office and the following bureaus:

- i. Housing Inspection; and
- ii. Rooming and Boarding House Standards.

(c) The Division of Community Resources includes the Office of the Director and the following offices:

1. Poverty and Law;
2. Youth Corps;
3. Weatherization;
4. Community Service Block Grants; and
5. Recreation.

(d) The Division on Women includes the Office of the Director and the following offices:

1. Advocacy;
2. Displaced Homemakers;
3. Domestic Violence; and
4. Hispanic Women.

(e) The Division on Aging includes the Office of the Director and the following offices:

1. Administrative Services;
2. Field Operations;
3. Fiscal Operations;
4. Program Operations; and
5. Planning and Policy Development.

(f) The Division of Local Government Services includes the Office of the Director, the Local Finance Board, the Distressed Cities Program, and the following bureaus:

1. Financial Regulation;
2. Local Management Services; and
3. Authority Regulation.

5:2-1.2 Agencies in, but not of, the Department

(a) The following agencies of State government are allocated to the Department of Community Affairs in compliance with Article V, Section 4, Paragraph 1 of the New Jersey Constitution but are not, except as noted in (b) below, under the supervision or control of the Commissioner:

1. New Jersey Housing and Mortgage Finance Agency;
2. Council on Affordable Housing;
3. Hackensack Meadowlands Development Commission;
4. New Jersey Sports and Exposition Authority;
5. Office of the Public Guardian;
6. Office of the Ombudsman for the Institutionalized Elderly; and
7. Governor's Council on Physical Fitness and Sports.

(b) The Commissioner is chairman of the New Jersey Housing and Mortgage Finance Agency and of the Hackensack Meadowlands Development Commission.

5:2-1.3 Public information requests

Members of the public may obtain general information concerning the Department of Community Affairs by writing to the Public Information Office at CN 800, Trenton, New Jersey 08625 or by calling 1-800-332-4357.

SUBCHAPTER 1.1 2. PETITIONS FOR RULES

5:29-1.1] 5:2-2.1 Scope

This subchapter shall apply to all petitions made by interested persons for the promulgation, amendment or repeal of any rule by the [Division of Housing and Development] Department of Community Affairs, or by any of its component divisions or bureaus, pursuant to N.J.S.A. 52:14B-4(f).

5:29-1.2] 5:2-2.2 Form of petition

(a) A petition for the promulgation, amendment or repeal of a rule shall be in writing, shall be legible and reasonably comprehensible, and shall be signed by the petitioner.

(b) Any such petition shall contain all of the following information:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking [which] that is requested;
3. The reasons for the request;
4. The petitioner's interest in the request, including, without limitation, any relevant organizational affiliation or economic interest;
5. The statutory authority under which the [Division] Department may take the requested action.

(c) Any document submitted to the [Division of Housing and Development] Department or to any of its component divisions or bureaus [which] that is not in substantial compliance with (a) and (b) above shall not be deemed to be a petition for a rule requiring further action pursuant to N.J.S.A. 52:14B-4(f).

5:29-1.3] 5:2-2.3 Procedure for petitions

(a) Petitions for the promulgation, amendment or repeal of a rule by the [Division of Housing and Development] Department of Community Affairs or any of its component divisions or bureaus shall be addressed to the Office of the [Director, Division of Housing and Development, CN 804] Commissioner, Department of Community Affairs, CN 800, Trenton, New Jersey 08625.

(b) Upon receipt of any such petition for a rule, the Office of the [Director] Commissioner shall date-stamp and log the petition and send a copy thereof to the [chief of any bureau] director of any division having jurisdiction.

1. The Office of the [Director] Commissioner shall also provide a copy of the petition to the [person designated by the Director as the Division's] Department's Administrative Practice Officer.

(c) Within 20 days following receipt of a copy of the petition, a [bureau chief] division director to whom such copy was sent shall recommend to the [Director] Commissioner, in writing, the proper course of action to be taken in response to such petition.

(d) Upon receipt of a copy of the petition, the Administrative Practice Officer shall prepare, for the [Director's] Commissioner's signature, a notice of petition for a rule [which] that is in compliance with N.J.A.C. 1:30-3.6(a). Upon signature by the [Director] Commissioner, the Administrative Practice Officer shall file such notice with the Office of Administrative Law.

(e) Within 30 days following receipt of the petition, the [Director] Commissioner, or any board or subordinate official within the Department having rulemaking authority with regard to the subject matter of the petition, shall either deny the petition or proceed to act on the petition.

1. Upon notification as to the decision of the [Director] Commissioner, or of the board or subordinate official having rulemaking authority, with respect to the petition, the Administrative Practice Officer shall prepare a notice of action [which] that is in compliance with N.J.A.C. 1:30-3.6(b). Upon signature by the [Director] Commissioner or other person having rulemaking authority, or person authorized to sign for a board having such authority, the Administrative Practice Officer shall file such notice with the Office of Administrative Law.

**CHAPTER 29
[DIVISION OF HOUSING AND DEVELOPMENT
ADMINISTRATIVE RULES] LANDLORD-TENANT
RELATIONS**

SUBCHAPTER 1. (RESERVED)

**SUBCHAPTER 2. LEASE TERMINATION BECAUSE OF
DISABLING ILLNESS OR ACCIDENT**

5:29-2.1 and 2.2 (No change.)

**[CHAPTER 2.]
[MANAGEMENT ASSISTANCE PROGRAMS]**

**CHAPTER 51
OFFICE OF RECREATION**

**SUBCHAPTER 1. HANDICAPPED PERSONS'
RECREATIONAL OPPORTUNITIES ACT**

[5:2-1.1 through 1.6] **5:51-1.1 through 1.6** (No change in text.)

(a)

**DIVISION OF HOUSING AND DEVELOPMENT
Notice of Administrative Correction
Hotels and Multiple Dwellings; Maintenance; Duties
of Owner**

N.J.A.C. 5:10-11.1

Take notice that the Department of Community Affairs has discovered an error in the text of N.J.A.C. 5:10-11.1(c). This notice of administrative correction is provided pursuant to N.J.A.C. 1:30-2.7(a)3.

Full text of the corrected rule follows (additions indicated in boldface thus).

5:10-11.1 Duties of owner

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

(c) In a multiple dwelling of nine or more dwelling units, the owner shall either perform the janitorial services himself, if he is a resident owner, or provide a janitor, or provide janitorial services to be performed, on a 24-hour a day basis in a manner approved by the bureau.

(e)-(h) (No change.)

(b)

**DIVISION OF HOUSING AND DEVELOPMENT
Emergency Shelters for the Homeless
Maintenance and Operation Standards
Adopted New Rules: N.J.A.C. 5:15**

Proposed: February 16, 1988 at 20 N.J.R. 341(b).

Adopted: November 29, 1988 by Anthony M. Villane Jr., D.D.S., Commissioner, Department of Community Affairs.

Filed: December 5, 1988 as R. 1989 d. 10, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 55:13C-5.

Effective Date: May 1, 1989.

Expiration Date: May 1, 1994.

Summary Of Public Comments and Agency Responses

N.J.A.C. 5:15-1.3 Administration and enforcement

COMMENT: One shelter provider expressed concern that municipal public officers would force unwanted shelters to close.

RESPONSE: If a shelter provider feels that a municipal officer has been arbitrary or unfair, then the provider has recourse to the appeals process outlined in the rules, at N.J.A.C. 5:15-1.8.

COMMENT: The New Jersey Catholic Conference submitted that there should be a right to appeal the decision of a local official to the Department.

RESPONSE: The right to an appeal is already included in the rules at N.J.A.C. 5:15-1.8.

COMMENT: Providers of shelters for victims of domestic violence indicated that the Division of Youth and Family Services should be responsible for evaluating the non-building standards of the operation of their shelters in as much as the Division funds these shelters.

RESPONSE: The agency agrees and has added a provision permitting the Bureau to enter into agreements with other State departments or agencies authorizing them to enforce these rules or the rules of the agency or department authorized.

N.J.A.C. 5:15-1.4 Continuation of lawful existing use

COMMENT: Several commenters expressed concern that shelters which are not in compliance with the rules would be required to close immediately.

RESPONSE: The language included in this section is standard language used in retroactive housing rules. Provisions for waivers to allow time for existing shelters to come into compliance with the rules have been added at N.J.A.C. 5:15-1.9. These provisions provide that an existing facility must be given a waiver unless it can be shown that money to bring it into compliance is available and the owner does not apply.

COMMENT: Several commenters expressed concern that religious buildings used as emergency shelters only occasionally would close.

RESPONSE: Facilities that operate as an incidental use to a religious use, sheltering 14 or fewer people for seven or fewer days four or fewer times a year are exempt from the rules (see comments and response regarding N.J.A.C. 5:15-1.9).

N.J.A.C. 5:15-1.5 Construction and alteration; change of use

COMMENT: The City of New Jersey expressed concern over the time and expense involved in obtaining a Certificate of Occupancy for a new shelter.

RESPONSE: Under the Uniform Construction Code, a Certificate of Occupancy is required for any change of use of an existing building. To insure that certificates of occupancy are issued in a timely manner, N.J.A.C. 5:15-1.3(a)3 was revised to require a construction official to issue a temporary Certificate of Occupancy when the public officer or Bureau is satisfied that the shelter meets these rules which do not rise to the level of the Uniform Construction Code, which standard is required to obtain a permanent certificate of occupancy.

COMMENT: Concern was expressed over the ability of certain existing shelters to obtain a certificate of occupancy.

RESPONSE: A certificate of occupancy is required only for newly-constructed or altered shelters or for those newly-created through a change of use of an existing building. Existing shelters will not be required to obtain a new certificate of occupancy. Also, see response above.

N.J.A.C. 5:15-1.9 Exceptions

COMMENT: The New Jersey Catholic Conference stated that it is unclear as to whether the terms "waiver," "modification," "exception," and "postponement" are interchangeable as used in this section. The Catholic Conference also expressed concern that 45 days is not sufficient time for a shelter to come into compliance with the rules. The Public Advocate suggested that provision should be made for a "permanent waiver."

RESPONSE: This section has been clarified to distinguish between the various forms of relief available for shelter providers. The 45 days allowed on a waiver in this section was changed to 60 days. The rules state that during this 60 day period, the shelter must either come into compliance with the rules or the shelter provider must present an acceptable plan for achieving compliance. The "permanent waiver" suggested by the Public Advocate is the exception provision at N.J.A.C. 5:15-1.9(a). Exceptions to particular portions of the rules are permanent.

COMMENT: A standard for the granting of an exception should be added.

RESPONSE: A standard was added to N.J.A.C. 5:15-1.9(a), the standard being that there be no undue hardship for the residents and that their safety not be jeopardized. This is the standard consistently used in maintenance rules for both multiple dwellings, and rooming and boarding houses.

COMMENT: Comments were received from inter-religious organizations in Union and Bergen County indicating that they operate facilities called "hospitality rooms" that house the overflow from local emergency shelters. These hospitality rooms house 14 or fewer persons for seven or

fewer days at a time four or fewer times a year and due to their temporary nature should not be considered emergency shelters for the purpose of these rules.

RESPONSE: The Department concurs that hospitality rooms are not emergency shelters and has excluded them. The Department also provided a definition of "hospitality room."

N.J.A.C. 5:15-2 Definitions

COMMENT: The City of Jersey City asked for clarification of the definition of "limited period of time" and "local social services."

RESPONSE: The definition of "limited period of time" was changed to make it clear by removing the reference to housing 14 people for longer than seven days more than four times a year and the definition of "local social services" was deleted as unnecessary because it is a term that is used in common usage.

COMMENT: A number of commenters requested that definitions for "exception" and "volunteer" be added.

RESPONSE: The definitions are added on adoption.

N.J.A.C. 5:15-3.1 Enumeration of rights

COMMENT: The New Jersey Catholic Conference commented that the shelter provider should have the right to restrict the access of visitors, particularly if these visitors are causing disruption. The providers of shelter for battered women suggested that the rules on visitation and the receipt of personal mail should be modified to recognize the need for confidentiality for the residents of battered women's shelters.

RESPONSE: The rules at N.J.A.C. 5:15-3.1(c)2 were amended to permit the facilities to establish conditions regarding visitation in the resident rules. This will permit them to limit visitation. The agency feels that the right to receive and send mail without interference will not affect the need for confidentiality for the residents of battered women's shelters and did not change the section.

COMMENT: The New Jersey Catholic Conference suggested that the provision for the confidential treatment of resident records be clarified to allow for the sharing of information of these records as needed to provide referral of the resident to social service agencies and medical services.

RESPONSE: N.J.A.C. 5:15-3.1(c)8 was amended to permit disclosure of the records in order to further the information and referral services offered pursuant to N.J.A.C. 5:15-3.7.

COMMENT: The New Jersey Catholic Conference has requested a clarification as to what is meant by "bona fide contract."

RESPONSE: The reference to "bona fide contract" has been removed and a reference to normal housekeeping and supervision as provided on the facility rules has been added.

COMMENT: The Public Advocate suggested that residents should be able to exercise all of their rights, not just register a grievance, without fear of reprisal.

RESPONSE: This suggestion has been incorporated at N.J.A.C. 5:15-3.1(c).

COMMENT: One commenter questioned whether shelter providers could still limit length of stay or if residents could only be removed for cause.

RESPONSE: The shelter provider may establish rules of residency. N.J.A.C. 5:15 does not preclude length of stay restriction, but only requires that these rules be provided to the residents.

N.J.A.C. 5:15-3.2 Facility rules

COMMENT: The City of Jersey City questioned whether the requirements for rules on seeking permanent housing and employment implied that the shelter provider must evict residents for failing to do these things. The City also questioned whether residents must be evicted for drunken or disorderly behavior. The Public Advocate also suggested that these resident obligations provide some flexibility.

RESPONSE: The facility rules are established by the shelter provider. Under N.J.A.C. 5:15, the shelter provider may determine what will be required of the resident for continued occupancy. N.J.A.C. 5:15 ensures that the resident is informed properly of what is required of him or her in the form of written facility rules, but gives the provider discretion as to what those rules will be. Amendments have been made to clarify this point (see N.J.A.C. 5:15-3.9).

N.J.A.C. 5:15-3.3 Resident services, general

COMMENT: The City of Jersey City questioned whether the shelter provider would also have to provide other services to special needs populations.

RESPONSE: The rules require only that the shelter provider establish contacts with service agencies in the community for the purpose of properly referring residents with special needs. The word "exclusively" was

added to make it clear that this section applies to facilities where only that type of population is present, not to facilities that may have some people in the categories.

COMMENT: The Public Advocate suggested that this section on general services be amended to cross reference the other sections where services are enumerated.

RESPONSE: This suggestion has been incorporated at N.J.A.C. 5:15-3.3(a).

N.J.A.C. 5:15-3.4 Resident services; facilities with children

COMMENT: The Public Advocate stated that these services, such as requirement for the provision of meals, should not be limited to family shelters.

RESPONSE: The Department feels that facilities that house only adults should not be required to provide meals because adult individuals can be expected to be able to provide them for themselves.

COMMENT: It was suggested by the Public Advocate that existing family shelters should provide private sleeping accommodations to the extent that this is possible. New family shelters should provide private sleeping accommodations and private baths.

RESPONSE: The Department feels, that while this is the ideal, to require private sleeping areas and private baths is too costly and would cause fewer of these facilities.

N.J.A.C. 5:15-3.5 General supervision services

COMMENT: The New Jersey Catholic Conference inquired as to how many staff members are required and questioned the basis for determining the number of staff members required. A number of commenters expressed concern over the cost of meeting the prescribed staffing ratios. The City of Jersey City noted that staff members often prepare meals and perform other functions in addition to supervision of residents. The Women's Resource and Survival Center suggested that the prescribed staffing levels are too low to provide for supervision and to deal with emergency situations which may arise.

RESPONSE: After reviewing the comments and visiting a number of facilities, the staffing requirements were reduced to two persons. This number was chosen because it currently seems to adequately serve the needs of the owners and the residents.

COMMENT: One shelter provider suggested that rather than requiring that the provider "assure" that balanced meals are eaten and that personal hygiene activities are performed, the shelter provider should only provide the necessary items, but not force residents to participate.

RESPONSE: The rules do not "force" residents to participate. They provide that the provider supply "guidance to assure" that the activities are performed. This is intended to be more than merely providing the items but less than force. The Department feels that providers have this obligation.

COMMENT: Concern was expressed over the requirement to notify next of kin, particularly in the case of a battered woman.

RESPONSE: The requirement is that the next of kin or resident's representative be notified thereby permitting notice to someone other than next of kin.

N.J.A.C. 5:15-3.6 Supervision; facilities with children

COMMENT: As above, commenters noted that it would be costly to meet the required staffing ratios. The City of Jersey City again noted that the provisions should reflect allowance for staff members performing multiple functions.

RESPONSE: See responses above.

N.J.A.C. 5:15-3.7 Information and referral services

COMMENT: The New Jersey Catholic Conference expressed concern regarding the level of staff training required to provide effective linkages and the burden placed on the shelter provider.

RESPONSE: The rules are meant to simply require that the shelter provider maintain communication with the agencies responsible for and capable of providing services to the shelter residents. This requirement or a network of two-way communication with social service agencies should not cause any undue hardship to the shelter provider. The rule was clarified to require "referrals to" rather than "linkages with" the resources, thereby making the requirement clearer, to require assistance when reasonably possible and to eliminate the requirement to participate in activities all of which are adequate to meet the needs of the residents.

N.J.A.C. 5:15-3.8 Admission standards

COMMENT: The Public Advocate expressed concern that a statement included prohibiting discrimination in admission standards on the basis of race, religion, national origin, or mental or physical disability.

Additionally, the Public Advocate indicated that only those who clearly pose a threat or identifiable problem may be denied access or removed.

RESPONSE: This suggestion has been incorporated at N.J.A.C. 5:15-3.8(i), with the exception of those with mental or physical disabilities. The Department did not include persons with mental or physical disabilities because it was determined that shelter operators should be able to refuse admission to people for whom they could not care.

COMMENT: Commenters expressed confusion over the meaning of "social, religious, or cultural regimen" as it related to the resident's diet. They stated that the decision as to whether to remain in the shelter in this case should be with the resident.

RESPONSE: This requirement, at N.J.A.C. 5:15-3.8(b)2 has been deleted.

COMMENT: The City of Jersey City questioned the exclusion of individuals needing a certain level of medical care or those with ambulatory impairments.

RESPONSE: The only individuals who would be excluded are those requiring a level of assistance which the shelter could not provide safely.

COMMENT: The New Jersey Catholic Conference questioned whether an emancipated minor, such as a teenage mother, could be admitted to the shelter.

RESPONSE: N.J.A.C. 5:15-3.8(b) has been changed to permit the facilities to admit persons who are emancipated minors. The Department feels teenage mothers are one class of emancipated minor.

COMMENT: The New Jersey Catholic Conference asked that a change be made to allow greater time prior to an interview with the resident as caseworkers are not available on the weekend.

RESPONSE: A change has been incorporated to allow greater time prior to resident interview.

COMMENT: Commenters expressed concern over the ability of the shelter provider to achieve the required staffing levels during snow or other emergencies.

RESPONSE: The rules have been changed at N.J.A.C. 5:15-3.8(h)3 to indicate that the shelter provider should make a reasonable effort to achieve the required staffing level and that understaffing cannot become a chronic condition.

N.J.A.C. 5:15-3.9 Discharge or removal

COMMENT: Commenters expressed concern over the requirement for notification of social service or other organizations prior to the removal of residents under the influence of alcohol or drugs or otherwise causing a disturbance or immediate threat to safety.

RESPONSE: The rule was changed to permit the immediate removal of a resident who is a danger to him or herself or another, without notice to any board of social service, municipal welfare agency or advocate or other group. Notice in all other instances is not, in the opinion of the Department, a burden.

COMMENT: The Public Advocate requested that alternate care and shelter be found for a resident before that resident's removal from the shelter. The Public Advocate also expressed concern over the forced admittance of shelter residents to mental institutions.

RESPONSE: This suggestion cannot be incorporated, as the shelter provider must be able to remove a person who is disruptive or presents a danger to other residents. To require that alternate care and shelter be found by the operator prior to removal would, in the Department's opinion, be very difficult. The agencies listed are better equipped to know of available space. The question of forced admittance to mental institutions is not raised by the rules, as no forced institutionalization is required.

COMMENT: One commenter expressed concern that people could be removed from a shelter for a minor break of house rules.

RESPONSE: The rule was changed at N.J.A.C. 5:15-3.9(c) to provide for notification and an opportunity of correction.

N.J.A.C. 5:15-3.11 Resident funds accounts

COMMENT: A commenter questioned the prohibition of requiring a resident to maintain a bank account because many providers require it so that residents may learn how to save and have some money to use for permanent needs.

RESPONSE: The rule was changed to permit the rules to require that a resident maintain a personal bank account. N.J.A.C. 5:15-3.1(a)7 and 3.11(f) were also revised to accommodate this change.

N.J.A.C. 5:15-4.1 General requirements

COMMENT: A battered women's shelter provider cautioned about allowing full access to records for agency or bureau employees.

RESPONSE: The rule was changed to permit access to the records only during business hours. Also, N.J.A.C. 5:15-1.3(a) was added in recognition of the needs of the population served by battered women's shelters that will permit monitoring of these type facilities by agreement between the Bureau and DYFS, which presently does so.

N.J.A.C. 5:15-4.2 Building standard requirements

COMMENT: The City of Jersey City correctly pointed out that the Use Groups R-1 and R-2 have been reversed. Concern was also expressed over the cost of complying with subchapter 4 of the Uniform Fire Code.

RESPONSE: The error noted has been corrected. As to the cost of compliance with the Uniform Fire Code, these standards apply to shelters for the homeless of Use Group R-1 or R-2, regardless of whether this is stated in these rules. These rules also provide that exemptions may be granted if funds are not available to insure compliance.

N.J.A.C. 5:15-4.3 Equipment and furnishings

COMMENT: The City of Jersey City expressed concern over the cost of providing sheets and pillowcases at a shelter which does not currently have these items.

RESPONSE: For health reasons, bedding should be of a type which may be washed prior to use by each new resident. This is considered to be a minimal requirement.

COMMENT: The Public Advocate submitted that the list of items to be provided to residents should include a toothbrush and toothpaste. Additionally, it was suggested that the heat be kept above an appropriate minimum temperature.

RESPONSE: These suggestions have been incorporated at N.J.A.C. 5:15-4.3(d)7 and (j).

N.J.A.C. 5:15-4.6 Housekeeping

COMMENT: The City of Jersey City suggested alternate language as cooking odors may linger making it difficult to comply with the requirement that furnishings be clean and free of odors.

RESPONSE: The rule was clarified to indicate that it is strong odors that are of concern.

N.J.A.C. 5:15-4.7 Maintenance

COMMENT: The requirement that walls and ceilings be free of peeling paint has been criticized as too costly. Another commenter suggested that the paint used be lead free. Additionally, a language change to the requirement for windows and screens to be kept clean and in good repair has been suggested.

RESPONSE: The Department feels that prohibiting peeling paint and requiring clean windows and screens are minimal requirements. The Department also feels that the removal of any existing lead based paint is impractical. The Department has reiterated the peeling paint prohibition, and required all paint used in interior areas to be lead-free, at new subsection N.J.A.C. 5:15-4.3(k).

N.J.A.C. 5:15-4.9 Kitchens; sanitation and sanitary procedures

COMMENT: The City of Jersey City expressed concern over the ability of shelter providers to comply with the New Jersey State Sanitary Code.

RESPONSE: This requirement as well as the requirements for compliance with all other State, county and local health and fire rules relating to kitchen operations have been removed as unnecessary because if these codes or rules are applicable they are so by operation of existing law; if they are not, it is not the intention of the agency to make them applicable.

N.J.A.C. 5:15-4.10 Space requirements for shelters

COMMENT: Several commenters stated that the requirements for space were excessive, particularly space for dining and leisure activities, for those providing only emergency shelter. The New Jersey Catholic Conference noted that the requirement for prior written approval for the use of dining space as leisure space is overly burdensome.

RESPONSE: The rule was revised to require 80 square feet per occupant in Class I and Class III facilities and 60 square feet per occupant in Class II facilities based on gross floor area. Dining space, where required, may be used for leisure space without prior approval. This change was based on re-evaluation of the needs of persons in these type of facilities as derived from a survey of existing facilities.

N.J.A.C. 5:15-4.11 Bath and toilet facilities

COMMENT: The City of Jersey City expressed concern over the cost of providing the requisite number of plumbing fixtures.

RESPONSE: The Department feels that the requirements as set forth are minimal.

COMMENT: Battered women shelter operators indicated that they often have male children and the rule would require additional bathrooms.

RESPONSE: The rule was amended to provide separate bathrooms for adults only.

N.J.A.C. 5:15-4.12 Sleeping rooms; adult shelter facilities

COMMENT: The New Jersey Catholic Conference stated that the requirements for sleeping space will cause them to reduce drastically the number of shelter beds available.

RESPONSE: See comment above for N.J.A.C. 5:15-4.10. Also, the aisle width between beds was reduced from three feet to two feet so that more beds would be accommodated without any reduction in safety.

N.J.A.C. 5:15-4.14 Food and dietary requirements

COMMENT: The New Jersey Catholic Conference stated that in a number of shelters food is provided and the residents prepare their own meals and that this rule would prohibit this.

RESPONSE: The rule was changed to permit residents to prepare their meals from food that is provided. This change was deemed to be appropriate in as much as the purpose of the rule is to see that meals are provided; how is not that material.

N.J.A.C. 5:15-4.15 Personnel

COMMENT: The City of Jersey City agreed that food service personnel should undergo testing for tuberculosis, but asked that the State bear the cost.

RESPONSE: The Department feels the cost is minimal in relation to the benefit.

N.J.A.C. 5:15-4.16 Staff qualifications

COMMENT: The New Jersey Catholic Conference commented that the ability of a staff member to speak in the language of the residents should depend upon the staff member's function. The City of Jersey City suggested that the requirement be for staff members to be fluent in the predominant language of the majority of the residents.

RESPONSE: The rule was revised to require only a sufficient number of staff be able to communicate in the language of most of the residents. It already stated only those who have contact with the residents must meet this requirement.

Summary of Agency-Initiated Changes

N.J.A.C. 5:15-1.2. Scope and purpose

N.J.A.C. 5:15-1.2(d) 2 was changed from "as defined in" to "whose owner is licensed pursuant to" to insure there is no confusion between the two acts, N.J.S.A. 55:13C-1 et seq. and 55:13B-1 et seq.

N.J.A.C. 5:15-1.3 Administration and enforcement

The addition to subsection (a) vesting jurisdiction for inspection facilities operated by the authority appointing the public officer was added to remove any conflict or appearance thereof, so that an authority could not be both operating and inspecting a shelter.

N.J.A.C. 5:15-1.4 Continuation of lawful existing use

The May 31, 1989 date was chosen to provide time for filing of license application.

N.J.A.C. 5:15-1.6 Licenses

At subsection (d), the addition qualifying employee was made to make it clear the section only covers the employee who is responsible for the operation of the shelter and not all employees.

N.J.A.C. 5:15-1.9 Exceptions and waivers

Subsection (c) was deleted and its provisions placed elsewhere in the rule. N.J.A.C. 5:15-1.9(b)4 was added to set for the criteria for compliance plan disapproval, bearing on the rationale for granting the waiver itself.

N.J.A.C. 5:15-2.1 Definitions

"Volunteers" was defined so that everyone may know what is meant by the word as used in the rules.

N.J.A.C. 5:15-3.2 Facility rules

Subsection (a)5 was changed to insure that providers know that child care is not required.

Paragraph (b) was added to provide more flexibility in having persons adhere to the rules.

N.J.A.C. 5:15-3.5 General supervision services

Subsection (k) was deleted because the number of staff required was reduced to two and the Department finds that they should be awake while on duty.

N.J.A.C. 5:15-3.6 Supervision, facilities with children

Subsection (c) was deleted, since the staff requirement being no longer census based eliminates the need for this provision.

The staffing requirement in subsection (d) was reduced to two because a survey indicated that this number is adequate to serve the needs of the owner/operator and the residents.

N.J.A.C. 5:15-3.8 Admission standards

Subsection (e) was changed so as not to overburden the shelter operators by requiring them to assist in relocation. Many shelter operators are not equipped to do so.

N.J.A.C. 5:15-3.9 Discharge or removal

Subsection (a) was changed to permit removal of a resident if the shelter rules provide a time limit for occupancy, because many shelters provide that people can only reside for a fixed time and the Department is concerned that some people may come into a facility knowing that, refuse to leave and not be able to be removed. The requirement in subsection (c) that residents be assisted in the preparation for moving was deleted because it was felt that it was an undue burden on the facility operators.

N.J.A.C. 5:15-4.2 Building standard requirements

The date was changed to May 1, 1989 to be consistent with the rules' effective date.

N.J.A.C. 5:15-4.3 Equipment and furnishings requirements

At subsection (c), the requirement that bedding be treated with fire retardant material was removed as unnecessary. Fire retardant material is generally required only in an institution type use and these facilities are residential uses. The reason they are required in institutional uses is because the residents there generally cannot exit freely. Residents of emergency shelters can exit.

Subsection (j) was changed to include a measurable standard rather than merely say that the furnace be maintained in good working order.

N.J.A.C. 5:15-4.7 Maintenance

At subsection (h), the qualifier "if provided" was added to make it clear the systems were not required.

N.J.A.C. 5:15-4.11 Bath and toilet facilities

At subsection (d), the requirement that private areas for changing clothes be adjacent to tubs and showers was removed as unnecessary. The purpose is to provide privacy. The location is immaterial.

In subsection (f), the word maximum was removed because, as proposed, the temperature could have been maintained at any temperature up to 120 degrees. The intention of the provision is to insure the availability of hot water.

N.J.A.C. 5:15-4.12 Sleeping rooms: adult shelter facilities

At paragraph (a)7, the words "or onto a common area leading to an exit corridor" were added because it is acceptable from a fire safety standpoint to have bedrooms opening onto common areas that lead directly to the outside by way of an exit corridor and this is presently the configuration of a significant number of the existing facilities. This change will save considerable time and money and will not cause any diminishment in fire safety.

Full text of the adoption follows (additions to proposal shown, in outline with asterisks *thus*: deletions from proposal shown in brackets with asterisks *[thus]*).

CHAPTER 15

EMERGENCY SHELTERS FOR THE HOMELESS

SUBCHAPTER 1. ADMINISTRATION AND ENFORCEMENT

5:15-1.1 Title

This chapter, promulgated pursuant to N.J.S.A. 55:13C-1 et seq., shall be known and may be cited as the "Rules Governing Emergency Shelters for the Homeless."

5:15-1.2 Scope and purpose

(a) These rules are promulgated for the purpose of establishing standards to ensure that every emergency shelter in the State of New Jersey is constructed, maintained, and operated in such a manner as will protect the health, safety, and welfare of its occupants.

(b) These rules shall not apply to institutions or facilities subject to the inspection and licensing of the State Department of Human Services or the Department of Corrections; facilities operated by the Division of Youth and Family Services; or facilities subject to the supervision of the Department of Health pursuant to N.J.S.A. 26:1-1 et seq. of the Public Health Law.

(c) Any person, partnership, corporation, organization, county, municipality or other entity, which operates a shelter is subject to the requirements of these rules.

(d) The provisions of these rules apply to any facility providing shelter and services to homeless adults or families and:

1. Is not a hotel or motel facility, a rooming house or a facility which provides shelter substantially similar to a house or an apartment and which includes individual private cooking areas and private bathrooms, except if the hotel, motel or rooming house space is used by a social services agency, and the space is used under a contract or lease with the hotel, motel or rooming house (including hotels and motels owned or leased by not-for-profit or charitable organizations), in which case these rules shall apply.

2. Is not a boarding home *[as defined in]* *whose owner is licensed pursuant to* N.J.S.A. 55:13B-1 et seq.

5:15-1.3 Administration and enforcement

(a) It shall be the duty and responsibility of the public officer designated by the municipality to administer and enforce the provisions of these rules with regard to emergency shelters for the homeless located within the municipality*, **except that an emergency shelter operated by the authority appointing the public officer shall for the scope and purpose of these rules be under the sole jurisdiction of the Bureau***.

1. When a municipality does not designate and appoint a public officer to administer and enforce these rules within 90 days of the effective date of these rules, it shall be the duty of the Bureau to administer and enforce them.

2. A municipality shall notify the Bureau of the name and office telephone number of the person appointed.

3. *[Notwithstanding (a) above, only the]* *The* construction official of a municipality shall *[be authorized to]* issue a *temporary* certificate of occupancy on a building requiring a certificate of occupancy pursuant to the State Uniform Construction Code *[and N.J.A.C. 5:15-1.5(c)]* *when the public officer or Bureau is satisfied that the shelter meets the standards set forth in these rules*.

4. The Bureau may enter into an agreement or agreements with any State Department or agency authorizing that department or agency to enforce these rules or the rules of that department or agency.

5:15-1.4 Continuation of lawful existing use

The lawful occupancy and use of any emergency shelter for the homeless existing on *[the effective date of these rules]* *May 1, 1989* may be continued unless a change is required by the provisions of these rules *[and]* *or* unless it is owned or operated by a person who has not obtained a license on or before *[December 31, 1987]* *May 31, 1989*.

5:15-1.5 Construction and alteration; change of use

(a) No emergency shelter for the homeless may be constructed or altered except in accordance with the Uniform Construction Code (N.J.A.C. 5:23).

(b) No building which is not lawfully occupied and used as an emergency shelter for the homeless on *[the effective date of these rules]* *May 1, 1989* shall be used as an emergency shelter for the homeless unless the owner and any operator thereof has been licensed as provided in these rules and unless a certificate of occupancy allowing use as an emergency shelter for the homeless for the number of occupants accommodated or intended to be accommodated is obtained from the construction official having jurisdiction.

(c) A new or amended certificate of occupancy shall be required in the event of any change of use other than the following:

1. A conversion from a one or two-unit dwelling to an emergency shelter occupied or intended to be occupied by five or fewer residents.

2. A conversion from a multiple dwelling to an emergency shelter occupied or designed to be occupied by at least six and not more than 20 residents.

3. A conversion from a hotel to an emergency shelter occupied or intended to be occupied by no more than the designed occupant load.

4. The use of a building, or portion thereof, that is an auditorium, gymnasium or similar A-3 assembly use as defined in the BOCA National Building Code as a Class II shelter as defined in N.J.A.C. 5:15-1.6(b)2.

(d) Nothing in these rules shall be construed to impair the power of the construction official or fire official to enforce any applicable provision of their respective codes pertaining to emergency shelters,

including, without limitation, provisions concerning hazardous conditions in existing buildings.

5:15-1.6 Licenses

(a) No person or agency shall own or operate an emergency shelter for the homeless without a license from the public official having jurisdiction, or the Bureau.

(b) There shall be three classes of shelters, which shall be as follows:

1. Class I—adult individuals, 24 hour a day shelter;
2. Class II—adult individuals, providing shelter during the night time hours only;
3. Class III—facilities with children.

(c) The annual fee for licenses shall be \$10.00.

(d) Except as otherwise provided in the Rehabilitated Convicted Offenders Act (N.J.S.A. 2A:168A-1 et seq.), no license shall be issued to any person who has at any time been convicted of embezzlement, extortion, crimes against the person or other like offenses, or to any partnership of which such person is a member, or to any association or corporation which said person is an officer, director, employee ***who will be responsible for the operation of the facility*** or in which, as a stockholder, such person has or exercises a controlling interest either directly or indirectly.

(e) No license shall be issued to any person who is not qualified pursuant to N.J.A.C. 5:15-4.6(f) ***4.15(e)***.

5:15-1.7 License applications

(a) The following information shall be required of a person applying for a license:

1. Name of applicant;
2. Address;
3. Telephone number;
4. Social security, federal I.D. number or non-profit I.D. number;
5. Date of birth;
6. Names and addresses of all partners, officers, directors and stockholders owning a controlling interest if the applicant is a partnership, association or corporation;
7. Name and home address of the person upon whom any orders or notices shall be served;
8. The following information regarding the structure to be used:
 - i. Street address;
 - ii. Tax map lot and block;
 - iii. Number of stories;
 - iv. The maximum number of residents;
 - v. The date the building received its certificate of occupancy for its use as an emergency shelter for the homeless and a copy thereof.

5:15-1.8 Administrative hearings

(a) Any person aggrieved by any ruling, action or order of the public officer or the Bureau shall be entitled to an administrative hearing in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.*.

(b) When the ruling, action or order complained of was issued by the public officer in a municipality the parties to the hearing shall be the municipality and the person aggrieved.

(c) When the ruling, action or order complained of was issued by the Bureau the parties to the hearing shall be the Bureau and the person aggrieved.

(d) In accordance with the Administrative Procedure Act, the Commissioner or his designee shall issue the final decision in all cases.

(e) The request for a hearing shall be filed with the public officer or the Bureau within 15 days of the receipt of the ruling, action or order. When the request is sent to the public officer a copy shall be sent to the Bureau by the complainant.

5:15-1.9 Exceptions ***and waivers***

*** (a) Exceptions to the requirements of this chapter may be granted as follows:***

[(a)]**1. An owner may request an exception ***[waiving,]*** modifying or postponing the application of any rule contained in this chapter ***which may be granted upon the showing that strict compliance would result in an undue hardship for residents of the facility and that**

the safety of the residents would not be unreasonably jeopardized if granted*.

[(b)]**2. Requests for exceptions shall be filed with the local officer or Bureau, as appropriate, within 20 days of the receipt of the ruling, action or order at issue but in no case after the date of abatement of any violation. The request shall state the rule that the owner wishes to be ***[waived,]*** modified or postponed, the reason for the request and how the health, safety and welfare of the resident will not be jeopardized if the exception were granted.

*** (b) Waivers may be granted as follows:**

1. A licensee may request a waiver of all or part of the requirement of this chapter. The request may be submitted to the local officer or Bureau at any time, shall be in writing and shall be granted or denied within 15 days of its receipt.

2. The local officer or Bureau shall grant the waiver requested if there are insufficient facilities that meet the requirements of this chapter available for particular populations.*

***[(c)]** These rules apply to all emergency shelters unless the license obtains a waiver from the local officer or Bureau. A request for waiver shall be submitted in writing and shall be granted or denied within 15 days of its receipt by the local officer or Bureau. A waiver may be granted when it can be shown that there is an emergent need for the emergency shelter for which the waiver is sought, and that the denial of the waiver would unreasonably delay or impede the opening of the shelter.*

[(d)]**3. Any waiver granted pursuant to this section shall be effective for a period of no longer than ***[45]* *60*** days unless the local officer or Bureau has received and approved a plan, submitted by the licensee, which demonstrates how the emergency shelter will be brought into compliance with these rules.

***4. The local officer or Bureau shall not disapprove a plan submitted unless the local officer or Bureau determines that there are sufficient funds available to bring the facility into compliance with these rules without decreasing the resident capacity or increasing the staff and the licensee, although eligible, is unable or unwilling to apply for and obtain such funds.**

(c) Hospitality rooms shall be exempt from these rules, provided they maintain minimum health and safety standards.*

5:15-1.10 Search warrants

(a) In the event that any local officer or Bureau representative is denied access to any emergency shelter for the homeless, a search warrant shall be obtained by the local officer or Bureau representative in any court having jurisdiction.

(b) The application for the search warrant shall state that access to the premises is required in order to enforce the Act or these rules and shall specify whether the desired inspection is a regular inspection in response to information received indicating the possible existence of a condition in violation of the Act or of applicable rules.

5:15-1.11 Tense, gender, and number

Words in this chapter which are used in the masculine include the feminine and neuter; words used in the singular include the plural and words used in the plural include the singular, all except where the context clearly indicates otherwise.

5:15-1.12 Severability

If any provisions of these rules shall be held invalid or ineffective in whole or in part, or inapplicable to any person or situation, it is the purpose and intent of these rules that all other provisions thereof shall nevertheless be separately and fully effective.

SUBCHAPTER 2. DEFINITIONS

5:15-2.1 Definitions

The following words and terms used in this chapter shall have the following meanings unless the context clearly indicates otherwise: "Act" means the Act concerning emergency shelters for the homeless (P.L. 1985 c.48, N.J.S.A. 55:13C-1 et seq.).

"Adult shelter" means a facility established and operated for the purpose of providing temporary shelter or food and shelter for households without children.

"Alteration" means a change or rearrangement in the structural parts or in the egress facilities of any building or structure, or any enlargement thereof or the moving of such building or structure from one location to another.

"Bureau" means the Bureau of Rooming and Boarding House Standards in the Division of Housing and Development of the Department of Community Affairs.

"Commissioner" means the Commissioner of the Department of Community Affairs.

"Competent staff" means persons able, both physically and mentally, to carry out the duties assigned to them and includes persons who are full or part time paid or volunteers.

"Director" means the Director of the Division of Housing and Development of the Department of Community Affairs.

"Egress" means path by which a person can travel safely and without assistance from a unit of dwelling space along a continuous and unobstructed line to an exterior open area.

"Emergency shelter" means emergency shelter for the homeless.

"Emergency shelter for the homeless": see N.J.S.A. 55:13C-2.

"Exception" means an instance where a particular rule does not apply.*

"Exit" means a means of egress from the interior of a building to an open exterior space.

"Financial services" means any assistance permitted or required by these rules to be furnished by an owner or operator to a resident in the management of personal financial matters, including, but not limited to, the cashing of checks, holding of personal funds for safekeeping in any manner or assistance in the purchase of goods or services with a resident's personal funds.

"Habitable room" means a residential room or space in which the ordinary functions of domestic life are carried on, including bedrooms, living rooms, studies, recreation rooms, kitchens, dining rooms, and other similar spaces, but excluding closets, stairways, laundry rooms, toilet rooms, and bathrooms.

"Hospitality room" shall mean a room or space that is incidental to a religious use wherein 14 or fewer persons are provided shelter for even or fewer days four or fewer times a year.*

"Licensee" means any person licensed by the public officer or the bureau as either an owner or an operator.

"Limited period *of* time" means providing shelter for less than 4 hours a day*. The term also means providing shelter for more than 14 people for longer than seven days at a time more than four times a year* ***or*** until such persons can find and occupy affordable housing on a permanent basis.

["Local social services" means any governmental, non-profit, municipal, or other governmental agency organized for the purpose of providing health services, administered by a full-time health officer and conducting a public program pursuant to law.]

"Means of egress": see the definition of "egress" above.

"NFPA" means the National Fire Protection Association.

"Public officer" means the person designated by a municipality pursuant to the Act and these rules who shall be responsible for the censure, regulation and inspection of emergency shelters for the homeless.

"Resident" means a person residing in an emergency shelter for the homeless, exclusive of the owner and his family, any bona fide employees, and the operator and his family.

"Shall" as used in these rules, is always to be construed as mandatory.

"Story" means that portion of a building that is between a floor level and the next higher level or roof above.

"Travel distance" means the maximum length of exit-way access travel, measured from the most remote point to an approved exit along the natural and unobstructed line of travel.

"Volunteers" means persons who provide services without charge to emergency shelters, to licensees or to residents, and may include residents, provided their obligations are set forth in the facility's rules.*

UBCHAPTER 3. RIGHTS OF RESIDENTS

5:15-3.1 Enumeration of rights

(a) The licensee must promulgate reasonable resident rules governing

ing day-to-day life and activities in the facility and post these rules in a location readily accessible to residents and visitors.

(b) Upon admission, residents must be notified as to the location of the facility rules setting forth their rights and responsibilities while residing in the facility.

(c) At a minimum, the facility must afford each resident the following rights and protections which shall be set forth in the resident rules*[:]** ***The residents shall be permitted to exercise these rights without fear of reprisal.***

1. To remain in the facility and not to be involuntarily removed without cause as set forth in N.J.A.C. 5:15-3.8**3.9*.

2. *[To receive visitors in designated areas of the facility during reasonable hours as specified in the resident rules.]* ***(Reserved)***

3. To exercise one's civil, constitutional, or legal rights.

4. To reasonable privacy in caring for personal needs.

5. To have private written and verbal communications including the right to meet with legal representatives and legal counsel. The resident rules must not *[unreasonable]* ***unreasonably*** restrict access by legal representatives and legal counsel to any areas of the facility. Any requirements as to prior notice, hours of access, or access to private family areas shall be set forth in the resident rules.

6. To present grievances on one's own behalf, or on behalf of other residents, to the licensee and to the local social services agencies ***[without fear of reprisal]***.

7. To manage one's own financial affairs, unless the person freely agrees to other arrangements with the shelter operator ***or unless the requirement of maintaining a personal account is a condition of occupancy***.

8. To confidential treatment of personal, social, financial and medical records ***except as is necessary to further the information and referral services pursuant to N.J.A.C. 5:15-3.7***.

9. To be free from restraint or confinement.

10. To receive and send mail or any other correspondence without interception or interference.

11. To leave and return to the facility and grounds at reasonable hours in accordance with the rules of the facility.

12. To a safe, healthful, and decent living environment that recognizes the dignity and individuality of the resident.

13. To refuse to perform services for the licensee except ***[pursuant to a bona fide contract between resident and licensee]* ***normal housekeeping and supervision in accordance with N.J.A.C. 5:15-3.2(a)4 and 6 as provided in the facility's rules*****.

5:15-3.2 Facility rules

(a) The facility rules inform residents of the obligations upon which their continued residence in the shelter depends. Such rules must clearly set forth the resident's obligations concerning compliance with the resident rules and the sanctions for non-compliance. At a minimum, rules concerning the following obligations shall be set forth in the resident rules:

1. Seeking permanent housing;

2. Seeking employment;

3. Ensuring school attendance of school-age children in their family;

4. Supervising minor family members;

5. Utilizing child care ***[provided through the facility]***, when such care is available or if offered, to enable the parent or caretaker relative to seek employment and/or permanent housing or to attend school or training;

6. Maintaining cleanliness of their own sleeping and living areas, including bathroom and cooking areas, if any;

7. Using communal areas appropriately;

8. Notifying facility staff of any illness of themselves or any member of their family; and

9. That residents are subject to removal for destruction of property, drunkenness, use of alcohol or drugs, violence or inappropriate activity that causes a disturbance.

(b) When a resident has a physical or mental handicap that may impede them from adhering to the facility rules, they must adhere to them only to the extent that appropriate assistance and services are available.

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*[(b)]***(c)* Each resident shall have the responsibility of complying with all reasonable rules of the facility and to respect the personal rights and private property of the other residents.

5:15-3.3 Resident services, general

(a) The licensee shall be responsible for the development and provision of resident services which shall include, at a minimum, *[room, board (if available), supervision,]* ***those services set forth in N.J.A.C. 5:15-3.5, General supervision services, and N.J.A.C. 5:15-3.6, Services at family shelters, and the* information and referral services *set forth in N.J.A.C. 5:15-3.7, Information and referral services*.**

(b) A licensee who proposes to serve a population with particular needs ***exclusively***, for example, the aged, substance abusers, alcoholics or alcohol abusers, ex-offenders, or the mentally or physically disabled, shall demonstrate that cooperative arrangements have been made with appropriate providers of funding or services and that a program of service and staff sufficient to meet the needs of the population:

1. Is planned at the time of application; and,
2. Is in place at the start of operations and is continued thereafter.

(c) The licensee shall establish procedures and assign staff sufficient to carry out the activities required in this section, as required in N.J.A.C. 5:15-3.5(g).

5:15-3.4 Resident services; facilities with children

(a) In all emergency shelters wherein *[facilities with]* children reside, the following services shall be provided as a minimum:

1. Sleeping area;
2. Access to three meals a day;
3. Appropriate levels of supervision, as required in N.J.A.C. 5:15-3.5(b)]**3.6(b)*;
4. Referral services for medical care, mental health care, employment counseling and social service needs as are required.

5:15-3.5 General supervision services

(a) Supervision services shall include, but shall not be limited to:

1. Intake;
2. Recording a daily census;
3. Monitoring residents to identify abrupt or progressive changes in behavior or appearance which may signify the need for assessment and service;
4. Surveillance of the grounds, facility, and activities of residents to prevent theft and resident harm;
5. Handling individual emergencies including arranging for medical care or other services;
6. Conduct and supervision of evacuation and monthly fire or evacuation drills;
7. Investigation and recording of incidents involving resident endangerment;
8. Guidance to assure residents attend meals if available and maintain appropriate nutritious intake;
9. Guidance to assure that necessary personal hygiene and grooming activities are performed.

(b) All staff shall be trained in the means of rapidly evacuating the building.

(c) At least one staff person on each shift shall be designated as responsible for the conduct and supervision of any evacuation.

(d) In the event that a resident develops a medical condition which requires immediate or continued medical or skilled nursing services which cannot be provided on an outpatient basis or which constitutes a danger to self or others, the licensee shall:

1. Make arrangements for transfer of such residents to an appropriate medical facility; and,
2. Notify the resident's representative, or next of kin, if known.

(e) In the event that a resident exhibits behavior which constitutes a danger to self or others, the licensee shall:

1. *[Arrange]* ***Refer the resident*** for appropriate professional evaluation of the resident's condition;
2. Notify the resident's representative or next of kin, if known; and,
3. If necessary, arrange for transfer of the individual to a facility providing the proper level of care.

(f) Each licensee shall designate staff to perform supervision functions during all hours of operation.

(g) The minimum number of supervision staff per adult facility required ***when being occupied*** shall be ***two, both of whom shall be paid staff.*** *[determined by resident census. The following number of staff shall be on duty and on site at all times.

Resident Census	Staff Required
1- 19	1
20- 40	2
41- 80	3
81-120	4
121-150	5
161-200	6]*

(h) For the purposes of calculated minimum staff requirements food service and transportation personnel are not counted.

(i) Staff shall be immediately physically accessible at all times while on duty.

(j) Staff may be assigned other duties in the facility which do not interfere with their physical accessibility, provided that such staff remain responsible for, and available for, the supervision of residents.

[(k) In facilities with 20 or more persons, one of the staff who is required between 11:00 P.M. and 7:00 A.M. may be permitted to sleep.]

5:15-3.6 Supervision; facilities with children

(a) In addition to the requirements of N.J.A.C. 5:15-3.4, supervision of the program and resident families with children in facilities shall include but shall not be limited to:

1. Maintaining a list of school-age children currently residing in the facility and the location of the school each child attends. The facility must verify departure for school on a daily basis during the school year;
2. Handling and documenting individual emergencies, including *[arranging]* ***referring residents*** for medical care or other emergency services and maintaining records of any special medical needs or conditions, the prescribed regimen to be followed and the names and phone numbers of medical doctors to contact should an emergency arise concerning these conditions;
3. Handling and documenting incidents involving resident endangerment, injury, or death;
4. Reporting or causing a report to be made to the Division of Youth and Family Services for child abuse and mistreatment involving a resident under age 18;
5. Instituting fire safety measures and arranging for fire safety training for facility staff and residents; fire drills must be held with staff and residents on a monthly basis and a record of such drills must be maintained; and
6. Securing the facilities. Such security may include locking the facility to control access and egress during specified nighttime hours, provided the door is steadily openable from the inside without a key.

(b) A sufficient number of competent staff must be on-site at all times to supervise, operate, and maintain the premises in a safe and sanitary condition and to render the services the facility is required to provide pursuant to the provisions of these rules.

[(c) The minimum number of program and services staff required for assistance and supervision of all the residents in facilities with children will be determined by a census of the resident population.]

(d) ***[One staff person for every 25 residents must be on duty and on site during resident nighttime sleeping hours.]*** ***A minimum of two staff persons must be on duty and on site at all times. One of the staff persons may be a volunteer.*** *[For all other hours, in accordance with the program and services provided pursuant to the operational plan, approved by either the Bureau or the public official, the following minimum number of staff must be on duty:

Resident Census	Minimum Staff Required
1-19	1
20-60	3
	1 additional supervisory staff member per 40 additional residents]*

*(e) For purposes of calculating minimum staff requirements, security, food service and transportation personnel are not counted.

1. At least one member of the staff on duty shall have a minimum of eight hours of basic first-aid training.

2. Staff may be assigned other duties in the facility which do not interfere with their accessibility.

3. The staffing ratio may be temporarily suspended under the emergency conditions set forth in N.J.A.C. 5:15-3.7(g) and (h).*

*[(f)]***(e)* Any staff member or volunteer who has contracted an infectious or contagious disease shall cease work at the facility. Return to work by personnel who have been diagnosed to have a communicable disease may, at the request of the facility director, be subject to a physician's written approval.

*[(g)]***(f)* The licensee shall orient and train employees in residents' rights and facility rules, procedures and/or rules relative to the specific duties to be performed, and emergency procedures.

15-3.7 Information and referral services

(a) The licensee shall have knowledge of, and provide *[(linkages with)]* ***referrals to,*** community resources which can assist each resident to maintain or improve his or her level of functioning.

(b) Information and referral services shall include:

1. *[(Establishing linkages with and arranging for)]* ***Making referrals to*** services from public and private sources for medical, housing, social, legal, and welfare services;

2. Cooperating with providers of services essential to residents; **and***

3. Assisting residents to secure services needed ***if reasonably possible.**[; and,]***

[4. Arranging for resident participation in community-based and community-sponsored activities.]

(c) The licensee shall utilize and cooperate with external ***legal and social*** service providers and shall:

1. Permit residents to meet in private with service providers;

2. In no way inhibit access to residents who need and desire services, unless such access is denied based on the criteria set forth in N.J.A.C. *[(5:15-3.7)]* ***5:15-3.8*;**

[3. Identify persons in need of services and assist external service providers in establishing a relationship with these residents;] and, ***3.**[4.]*** Cooperate with service providers in executing a plan for service for individual residents.

[(d) Each licensee shall designate sufficient staff to perform information and referral services.]

15-3.8 Admission standards

(a) ***[(The)]* ***Except as set forth in (e) below, the*** licensee shall limit and care for only those individuals who do not require services beyond those permitted by law and rules.**

(b) The licensee shall not accept, except on an emergency basis, or permit to remain in the facility any person who:

1. Causes danger to himself or others or interferes with the care and comfort of other residents;

[2. Is in need of a social, religious, cultural, or dietary regimen that cannot or will not be met by the facility;]

*[3.]**2.* Is in need of a level of medical or nursing care that cannot be rendered safely and effectively at the facility;

*[4.]**3.* Is incapable of ambulation on stairs without personal assistance, unless such a person can be assigned a room on a floor with ground level egress; or,

*[5.]**4.* Is under 18 years of age (unless part of a family)*[.]* **or unless the person is an emancipated minor.***

(c) The person designated by the licensee as responsible for admission decisions shall interview each resident within *[(24)]* ***72*** hours of entry to determine the immediate needs of the resident and whether or not the facility can meet or continue to meet those needs.

(d) Within 24 hours of entry, the person designated by the licensee shall inform the resident of the conditions and rules governing residency and termination of residency, of the services to be provided and of the charges for services, if any.

(e) The licensee shall assist ***in so far as possible*** persons who are accepted on an emergency basis, and who are not appropriately placed, to relocate within 72 hours of their admission.

(f) A licensee shall not permit occupancy to exceed the number of persons specified as the licensed capacity or on the certificate of occupancy.

(g) Notwithstanding (f) above, the Department may authorize a licensee to provide short-term emergency shelter to a number of persons in excess of the certified capacity of the facility. At the time of licensing, or at the request of a currently licensed facility, the local authority or the Bureau shall establish a limit on the number of persons that may be admitted to a given shelter in emergency situations. This emergency capacity shall be predicated upon the physical layout of the facility and the conditions set forth in (h) below. Emergency capacity shall be posted in writing next to the facility license and the certificate of occupancy.

(h) The licensee may provide short-term emergency shelter to persons in excess of certified capacity only if all the following conditions are met:

1. Snow emergencies, excessive cold, or other circumstances create an emergency need for additional shelter space;

2. The licensee is able to meet the food and shelter needs of all persons in residence;

3. The licensee*, **as far as possible,*** assigns staff sufficient to ***[(meet census-based staffing requirements set forth in these rules)]* ***insure the safety of the residents*;** and**

4. The number of persons admitted is not in excess of the authorized emergency limit.

[(i) No licensee shall deny admission to a person, nor remove a resident, based upon race, religion or national origin.

5:15-3.9 Discharge or removal

(a) A licensee may remove a resident under the terms set forth in the facility rules ***, which rules may provide for a time limit for occupancy*.** The licensee shall notify ***the County Board of*** social services, ***municipal welfare,*** advocacy or other involved groups for assistance and advice for alternate living arrangement before moving a resident.

(b) In the event of transfer to a health, mental health, or other facility, the licensee shall send identifying information and identification of the resident's representative and physician, if available.

(c) Prior to removal ***of a resident for breach of the house rules*** the licensee shall explain to the resident(s) the basis for removal and ***give the resident an opportunity to correct the behavior* ***[(assist the resident(s) in preparation for moving)]*.** ***A resident who is a danger to him or herself or another may be removed without the notice required in (a) above.*****

(d) The licensee shall return to the resident, representative, or other appropriate individual or agency any monies, property, or items of value which came into the possession of the operator or ***licensee* after discharge or transfer ***of the resident*.****

5:15-3.10 Resident funds and valuables

A licensee who receives any funds or property from a resident or who acts in any way as a financial agent for a resident, either formally or informally, shall issue a signed receipt to the resident noting the date, amount, or description of property and the nature of the transaction. Records of all transactions shall be maintained as part of the operator's permanent records.

5:15-3.11 Resident fund accounts

(a) The licensee may offer a resident an opportunity to place personal funds in a facility-maintained account;

(b) The licensee shall not require a resident to maintain a personal fund account at the facility against the resident's wish*, **unless it is required by the facility's rules*;**

(c) The licensee shall provide for the safekeeping and accountability of resident funds;

(d) The licensee shall hold resident funds in trust for the sole use of the resident and shall not use these funds for any other purpose;

(e) Resident funds shall not be commingled with the personal funds of the licensee or the operating funds of the facility or become an asset of the licensee;

(f) The resident may terminate the personal fund account at any time ***unless it is a condition of occupancy, in which case termination of the personal fund account is a cause for removal*;**

(g) No service fee shall be charged by the licensee for maintaining a fund account for a resident;

(h) Each resident shall have the opportunity, during regular business hours, to examine his or her personal fund account records upon request.

SUBCHAPTER 4. FACILITY REQUIREMENTS

5:15-4.1 General requirements

A licensee shall afford any officer or duly authorized employee or agent of the public officer or Bureau full access at any time to the residents, grounds, ***and*** buildings^{*}[, and during]^{**}. ***During*** facility business hours, ***employees or agents of the public officer or Bureau shall have access*** to books and papers relating to the facility.

5:15-4.2 Building standard requirements

(a) A building newly constructed after ***[January 1, 1987]* *May 1, 1989*** for use as a shelter shall be in compliance with the Uniform Construction Code for R-1 use, group occupancy, if residency is for ***[more]* *less*** than 30 days or R-2 if residency is for 30 days or ***[less]* *more***.

(b) ***[In an existing]* *A* shelter *existing on May 1, 1989*** or an existing structure modified for use as a shelter after ***[January 1, 1987,]* *May 1, 1989*** ***[the structure]*** shall conform to the requirements of the Uniform Fire Code (N.J.A.C. 5:18-4) for R-1 use group structures, if residency is for ***[more]* *less*** than 30 days, or R-2 if residency is for 30 days or ***[less]* *more***.

5:15-4.3 Equipment and furnishings requirements

(a) The licensee shall provide equipment and furnishings which support daily activities and do not endanger resident health, safety, and well-being.

(b) All equipment and furnishings shall be durable, clean, and appropriate for their intended function.

(c) The facility must furnish each resident, whether an adult or a child, with a clean bed (or cribs for infants) a minimum of 27 inches in width, solidly ***[constructed]* *constructed***, and in good repair which has clean and well-constructed bedding ***[which shall be treated with fire retardant material]***.

(d) Each resident shall be supplied with:

1. Sheets;
2. A pillow case;
3. At least one blanket;
4. Towels;
5. Soap; ***[and,]***
6. Toilet tissue^{*[.]*}******; **and,***
- *7. A toothbrush and toothpaste.***

(e) Bed linens, blankets, and towels shall be clean and washable; and sufficient in number for changes when necessary.

(f) All operable windows must be equipped with screens and locks.

(g) Light fixtures must be shaded to prevent glare. All electrical outlets accessible to children must be adequately protected.

(h) Dining areas must be furnished with dining tables and chairs appropriate to the size and function of the facility.

(i) Living rooms, sitting rooms, lounges, and recreation areas must be furnished with tables, chairs, lighting fixtures, and other equipment appropriate to the size and function of the specific area and of the facility.

(j) Heating systems must be maintained in good working order ***and shall be able to maintain a temperature of at least 65 degrees Fahrenheit when the outside temperature is zero degrees Fahrenheit***.

[k] All family shelters shall insure that all painted interior areas are free from chipping, peeling or flaking paint and that all paint used in these areas is lead-free.

5:15-4.4 Laundry facilities

If provided, laundry facilities shall be located in a clean, dry, well-lighted area.

5:15-4.5 Posting areas

The licensee shall maintain areas suitable for posting required notices, documents, and other written materials in locations visible to, and accessible to, residents, staff, and visitors.

5:15-4.6 Housekeeping

(a) All areas of the facility shall be free of vermin, rodents, and trash.

(b) All areas of the facility, including, but not limited to, the floors, walls, windows, doors, ceilings, fixtures, equipment, and furnishings shall be clean and ***[odor]* free *from strong odors***.

(c) Blankets and pillows shall be laundered as often as necessary for cleanliness and freedom from odors.

(d) Adequate, properly maintained supplies and equipment for housekeeping functions shall be provided.

5:15-4.7 Maintenance

(a) The licensee of each facility shall ensure the continued maintenance of the facility.

(b) The building and grounds shall be maintained in a clean, orderly condition and in good repair.

(c) All equipment and furnishings shall be maintained in a clean, orderly condition and in good working order.

(d) Walls and ceiling covering shall be free of peeling paint.

(e) Floors and floor coverings shall be free of cracks and missing or raised portions which constitute a safety hazard.

(f) Electrical systems including appliances, cords, and switches shall be maintained in good working order.

(g) Plumbing and plumbing fixtures shall be maintained in good working order.

(h) Ventilation, air conditioning, and air-changing systems^{*}, **if provided,*** shall be maintained in good working order.

(i) Windows and screens shall be kept clean and in good repair.

5:15-4.8 Safety procedures

(a) Chain locks, hasps, bars, padlocks, and similar devices must not be used in any communal area in a way that would inhibit access to an exit.

(b) Doors in residents' rooms in Class III facilities must be able to be secured by the resident, provided such doors can be unlocked from the outside and the inside and keys are available to supervisory and security staff at all times.

(c) Residents shall not have access to storage areas used for cleaning agents, bleaches, insecticides, or any other poisonous, dangerous, or flammable material, unless necessary for work they are performing.

(d) Hallways and corridors shall not be used for storage of equipment or trash.

5:15-4.9 Kitchens; sanitation and sanitary procedures

(a) All kitchens or food services and preparation areas shall be well-lighted and ventilated, and provided with essential and proper equipment adequate for the number of residents to be served, for storage, refrigeration, freezing, preparation, and serving of food.

(b) Food service areas must be provided with sufficient and suitable space and equipment to maintain efficient and sanitary operation of all required functions^{*}[, in compliance with the New Jersey State Sanitary Code (See N.J.A.C. 8:8, 8:9, 8:22, 8:23, 8:24, 8:26, 8:44, 8:51-7, and 8:57). All other State, county, and local health and fire department regulations relating to kitchen operations, for fire protection, safety, sanitation, and health shall also be complied with]^{*}.

5:15-4.10 Space requirements for shelters

***[(a) Every Class I and III emergency shelter shall have space for dining and leisure activities.**

(b) Space used for sleeping or for passage shall not be considered as dining or leisure space.

(c) Space provided for dining shall be at least 12 square feet per certified bed for the first 50 beds and 10 square feet for each additional bed.

(d) Space provided for leisure area shall be at least 12 square feet per bed.

(e) When not in use, dining space may be used, with prior written approval of the public officer or the Bureau, as leisure space.]^{*}

***[a) Every Class I and III emergency shelter for the homeless shall contain at least 80 square feet of space for each occupant which shall be calculated on the basis of total gross floor area. For the purposes of this subsection children under the age of 36 months shall not be considered occupants.**

(b) Every Class II emergency shelter for the homeless shall contain at least 60 square feet of space for each occupant which shall be calculated on the basis of total gross floor area.

(c) Every Class I and III emergency shelter providing food services shall have space for dining and leisure activities.

(d) When not in use, dining space may be used as leisure space.*

5:15-4.11 Bath and toilet facilities

(a) There shall be a minimum of one tub or shower for every 20 individual residents and one sink and one toilet for every 20 residents. Urinals may be substituted for no more than one half of the total toilets required. Separate bathrooms shall be provided for male*[s]* adults* and female*[s]* adults* in ratios appropriate to the percentage of male*[s]* adults* and female*[s]* adults* in the facility census.

(b) Facilities shall provide adequate space and equipment, such as bathtubs, portable tubs, and basins, for the bathing and changing of infants and young children.

(c) Facilities shall assure that bathing and toilet facilities are accessible and in working order with hot and cold water 24 hours a day.

(d) Curtains, dividers, partitions, private stalls, or other similar devices shall be utilized to afford residents privacy when using toilets, showers, and tubs. Private areas for changing clothes shall be provided *[adjacent to tubs and showers]*.

(e) Bathrooms shall be cleaned as often as is necessary to maintain sanitary conditions.

(f) Hot water for bathing and washing shall be maintained at a [maximum]* temperature of 120 degrees Fahrenheit.

5:15-4.12 Sleeping rooms; adult shelter facilities

(a) In single occupancy sleeping rooms, a minimum of 70 square feet per room shall be provided;]

*(a)**[(b) In sleeping]* *Sleeping* rooms for two or more residents*[, a minimum of 50 square feet per resident shall be provided.]* shall conform to the following:*

1. A minimum of *[three]* *two* feet*[, which is included in the per resident minimum.]* shall be maintained between beds and for aisles;

2. *[Shall]* *Sleeping rooms shall* have no more people sleeping therein than can be adequately provided for;

3. Separate sleeping rooms shall be provided for men and women;

4. If partitions are used to subdivide sleeping areas within the same room, their minimum height shall be sufficient to afford individual privacy, approximately five feet high;

5. Partitions separating sleeping rooms from other rooms shall be fireproof, self-closing, and smoke tight;

6. All sleeping rooms shall be adequately lighted and adequately ventilated*[.]*;*

7. Bedrooms shall open directly into exit corridors *or into a common area leading to an exit corridor*;

8. A passageway or corridor may not be used as a bedroom;

9. Bedrooms shall have individual, lockable storage lockers for resident belongings. Each locker shall be large enough to accommodate winter clothing.

10. Adequate storage space for cleaning supplies and equipment shall be provided.

5:15-4.13 *[Sleeping rooms; child shelter facilities]* *(Reserved)*

[Sleeping rooms in facilities with children shall have a minimum of 50 square feet, if occupied by one resident.]

5:15-4.14 Food and dietary requirements

(a) The licensee of Class III emergency shelters shall provide residents three well balanced and nutritious meals a day. The meals may be provided on-site or off-site, either directly or through contractual arrangement *or through the provision of food that the residents prepare themselves*.

(b) No more than 15 hours shall elapse between meals.

(c) In Class III emergency shelters, the licensee shall provide refrigeration and cooking equipment capable of being used for the storage and preparation of infant formula, baby food, milk and juices.

5:15-4.15 Personnel

(a) The licensee shall provide staff sufficient in number and qualified by training and experience to render those services mandated by these rules.

(b) A current, written staffing schedule shall be maintained on site.

(c) The licensee shall maintain personnel records which are current, contain sufficient information to support placement in any position required by these rules and record all wages, benefits, reimbursements, bonuses, gifts, or payments given any employee or resident.

(d) Any person working in the food service area shall have a tuberculosis skin test or a chest x-ray at the time he or she begins work and at least every 24 months thereafter. A person having a positive skin test shall be required to have a chest x-ray.

*(f)**(e)* No individual who is suffering from a degree of mental illness or habituation or addiction to alcohol or other drugs such that the individual causes, or is likely to cause, danger to himself or others or is unable to perform his or her assigned duties, shall be employed or permitted to work as either an employee or volunteer.

*(g)**(f)* No individual shall be permitted to work, either as an employee or volunteer, if infected with a communicable disease that might endanger the health of residents.

5:15-4.16 Staff qualifications

(a) Each staff member shall be capable of associating with, and providing services and supervision to, the population served by the facility.

(b) *[Staff]* *A sufficient number of staff* who have contact with residents shall be able to communicate in the *[predominant]* language of *most of the* residents, understand and carry out directions and instructions, record messages and keep records.

(c) No person under 18 years of age shall be:

1. Charged with direct responsibility for the supervision of residents; or

2. Permitted to work in an on-site supervision position.

5:15-4.17 Records

(a) Licensees shall maintain records that accurately reflect the number of persons and their names:

1. Residing in the shelter;

2. Who sought admission and were not admitted to the shelter; and

3. Who were discharged from the shelter.

(b) The licensee shall prepare and keep an emergency incident report indicating the following:

1. The name or names of the person(s) involved;

2. The date and time of the emergency;

3. The type of emergency; and

4. The disposition.

(c) The records required in (a) and (b) above shall be maintained on the premises and retained for one year.

(a)

DIVISION OF COMMUNITY RESOURCES

Administration of Funds Received Under the Higher Education Act of 1965

Adopted Repeal: N.J.A.C. 5:50

Proposed: February 21, 1989 at 21 N.J.R. 367(b).

Adopted: March 30, 1989 by Anthony M. Villane Jr., D.D.S.,

Commissioner, Department of Community Affairs.

Filed: April 3, 1989 as R.1989 d.227, **without change**.

Authority: N.J.S.A. 52:27D-3.

Effective Date: May 1, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the repealed rules may be found in the New Jersey Administrative Code at N.J.A.C. 5:50.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Core Course Proficiencies

Adopted Amendments: N.J.A.C. 6:8-1.1, 4.3 and 7.1; 6.39

Adopted New Rules: N.J.A.C. 6:39-1.3, 1.6 and 1.7

Proposed: February 6, 1989 (at 21 N.J.R. 235(a)).

Adopted: April 5, 1989 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: April 10, 1989 as R.1989 d.240, **without change**.

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

Effective Date: May 1, 1989.

Expiration Dates: N.J.A.C. 6:8, January 5, 1992. N.J.A.C. 6:39, October 18, 1989.

Summary of Public Comments and Agency Responses:

No individuals spoke at the public testimony session provided by the State Board, and only one letter with comments was received. The comment is summarized below.

COMMENT: The rules should apply to all students including those in vocational education programs.

RESPONSE: Administrative Code requirements apply to all students except special education students who are exempted from specific requirements as set forth in their individual education program.

Full text of the adoption follows.

6:8-1.1 Words and phrases defined

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

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

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

...

6:8-4.3 Evaluation of elements and standards

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

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

i. (No change.)

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

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

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

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

i. (No change.)

ii. The district board of education shall provide parents or guardians as well as other district residents and teaching staff members

opportunities for discussion regarding State rules and local district procedures for implementation of district goals, objectives and standards through one or more public meetings of the district board of education. The initial meeting shall be held prior to September 30 of each year. The district board shall publish a special notice 10 days in advance of each meeting describing the purpose, listing the items to be discussed and indicating the availability of material relative to such items. The discussion at such meeting(s) shall include, but not be limited to:

(1) (No change.)

(2) The result of:

(A) (No change.)

(B) The Statewide and district testing programs including analysis and interpretation of schools and district performance.

(C) No change.)

(3) The documents listed in (a)2ii (1) and (2) above shall be accessible to the public for inspection at such meetings and shall be available upon request at the earliest possible time in accordance with the provisions of the public records law, N.J.S.A. 47:1A-1 et seq. iii.-v. (No change.)

3. The comprehensive curriculum and instruction element of the district shall be rated acceptable upon documentation of performance in seven indicators as follows:

i. The district board of education shall approve annually a curriculum for all grades from pre-kindergarten through grade 12 for all subjects including all State mandated programs and services.

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

(3) In accordance with N.J.A.C. 6:8-7.1(c)2iii and 6:39-1.3(b), district boards of education shall provide for:

(A) Development of course proficiencies, which shall include, but not be limited to, those identified and established by the Department of Education as core course proficiencies;

(B) Establishment of a standard of student mastery; and

(C) Annual assessment of all students in those proficiencies necessary to meet all state and local high school graduation requirements ii.-vii. (No change.)

4.-7. (No change.)

8. The mandated basic skills test element of the district shall be rated acceptable upon documentation of achievement in two indicators as follows:

i. Seventy-five percent of the pupils in grade nine of each school shall have passed the State-mandated High School Proficiency Test pursuant to N.J.A.C. 6:39-1.2(a) and (b).

ii. (No change.)

9. The equal educational opportunity and affirmative action element of the district shall be rated acceptable by documentation of performance of three indicators as follows:

i. (No change.)

ii. Annually, the district shall review progress toward the objectives of the State-approved affirmative action plans for classroom and employment practices of the district.

iii. (No change.)

10. (No change.)

6:8-7.1 Promotion, remediation, and graduation procedures

(a) District boards of education shall adopt policies and procedures for:

1. Pupil promotion, related to district goals, objectives, and pupil proficiency;

2. (No change.)

3. High school graduation requirements, pursuant to law and rules which are consistent with the achievement of State and district goal objectives, and pupil proficiency with particular reference to reading, writing, and mathematics skills as specified in (b), (c), (d), and (e) below;

4. The exemption of handicapped pupils from the high school graduation requirements, pursuant to N.J.A.C. 6:28-3.6 and 4.6:39-1.7, and (b)6 below;

5. Annual notification to pupils and parent(s) or guardian(s) of the policies and procedures for pupil promotion, remediation, and the high school graduation requirements;

6. Notification to each entering ninth grade pupil and his or her parent(s) or guardian(s) of all State and local high school graduation requirements. In addition, at the beginning of each course required for graduation, each district board of education shall distribute a list of proficiencies required for successful completion of that course to all pupils and their parent(s) or guardian(s). These proficiencies lists shall include, but not be limited to, the core course proficiencies identified by the Department of Education in (c)2iii below;

7. Notification to each pupil and parent(s) or guardian(s) at appropriate times during the school year of the pupil's progress in meeting the promotion, course proficiencies and the high school graduation requirements;

8.-10. (No change.)

(b) District boards of education shall adopt policies and procedures for high school graduation of all pupils, pursuant to law and rule, which shall include, but not be limited to, performing at or above the State minimum levels of pupil proficiency on the State-mandated High School Proficiency Test in reading, writing, and mathematics skills.

1. Pupils who perform below State minimum levels of pupil proficiency on one or more areas of the State-mandated High School Proficiency Test shall be provided with an individual comprehensive assessment, as specified in N.J.A.C. 6:8-6.1. Based on the individual comprehensive assessment, the pupil shall receive the necessary services to remedy the identified deficiencies. Such services shall include, but not be limited to, the development and implementation of an Individual Student Improvement Plan. This individual plan may be carried out through the regular program or through an extended school day, extended school week, or extended school year. Comprehensive pupil assessment and re-evaluation of the individual plans shall take place at least once each year until all identified deficiencies have been remediated.

2. Each district board of education shall develop procedures for the development of Individual Student Improvement Plans. These procedures shall include, but not be limited to, those procedures set forth in N.J.A.C. 6:8-6.2.

3. Pupils who perform below State levels of pupil proficiency on one or more areas of the State-mandated High School Proficiency Test shall be provided an opportunity to demonstrate mastery in each academic year.

4. Pupils who perform below State minimum levels of pupil proficiency on one or more areas of the State-mandated High School Proficiency Test and have satisfied all other State and local graduation requirements shall be provided an additional evaluation during the twelfth year which is based on the Individual Student Improvement Plan required under (b)1 above. This evaluation, the Special Review Assessment, may include, but is not limited to:

i.-iii. (No change.)

iv. Practical demonstrations of specific skill mastery which occur either in or outside of school, but which are not part of regular course work;

v.-vii. (No change.)

viii. Visual, auditory, and/or medical data, as appropriate;

ix. (No change.)

x. Examination of pupil proficiencies in other areas.

5. The findings of the evaluation required in (b)4 above shall be recorded on a Special Review Assessment Student Profile Form developed by the Department of Education. An independent evaluation of these data must be made by a local district review panel comprised of at least three teaching staff members not currently instructing the pupil. On the basis of the evidence listed in (b)4 above the recommendations of the review panel, the building principal and the chief school administrator may certify satisfactory attainment of the State minimum levels of pupil proficiency in reading, writing, and/or mathematics. Whether or not such certification occurs, the district must retain the Student Profile Form, including all attachments, for one year after the pupil's class graduates. If such certification occurs, the Special Review Assessment Student Profile Form must be forwarded to the county superintendent of schools by March 1 of the regularly scheduled graduation year. Based upon the documentation provided by the local district, the county super-

intendent of schools must certify whether or not the State minimum levels of proficiency have been achieved and notify, in writing, the chief school administrator of this decision.

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

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

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

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

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

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

(1) (No change.)

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

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

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

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

(6) (No change.)

(7) One-half credit year of career education. This requirement may be satisfied through the alternative methods of infusion into existing courses, course equivalents, or a career education course. For credit to be awarded, career education shall be offered as a course, as specified in (c)1ii below or in (d) below.

ii. Pupils may meet the curriculum requirements set forth in (c)1i above through demonstration of mastery of Statewide core and locally determined course proficiencies in each of the above curriculum areas or through program completion procedures noted in (d) below. This determination shall be made by the district board of education.

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

i. The Commissioner shall recommend to the State Board of Education uniform Statewide core course proficiencies for those curriculum areas mandated by the State Board for high school graduation and for foreign languages. Upon the receipt of the Commissioner's recommendation, the State Board of Education shall review and approve by resolution the core course proficiencies. The core course proficiencies shall be developed and recommended to the Commissioner through a collaborative process which shall include:

(1) Curriculum convocations,

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

(3) Local school district review.

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

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

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

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

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

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

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

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

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

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

(1) Mathematics by September 1, 1991;

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

(3) English by September 1, 1992;

(4) Social studies by September 1, 1992;

(5) Foreign languages by September 1, 1993;

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

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

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

iv. District boards of education shall establish course proficiencies for each course in all curriculum areas. Upon approval of these proficiencies by the district board of education, all students shall demonstrate mastery through specified methods and instruments of assessment in all courses as a condition of graduation.

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

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

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

i. Course credit requirements shall be established as follows:

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

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

(3) (No change.)

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

(A) (No change.)

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

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

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

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

3. (No change.)

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

(f) Review and reporting requirements include the following:

1.-2. (No change.)

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

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

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

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

6:39-1.1 Authority of the Commissioner

(a) (No change.)

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

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

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

6:39-1.2 Basic skills proficiency in reading, writing and mathematics (HSPT)

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

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

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

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

6:39-1.3 Core course proficiencies assessment

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

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

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

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

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

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

(c) The Department of Education shall assist school districts in identifying and/or developing school district assessment techniques and instruments through curriculum panels, prepared assessment

material, and regional training activities. The Department shall also identify those school districts that have effective assessment programs which can serve as models.

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

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

6:39-1.4 Dissemination of information

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

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

2. The Department of Education shall produce and distribute to chief school administrators as uninterpreted reports for tests developed by the Department, rosters of pupil performance and other reports as deemed appropriate by the Commissioner.

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

- i. By grade and by test for tests developed by the Department; and
- ii. By grade, for certain other tests administered by each district, as deemed appropriate by the Commissioner.

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

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

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

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

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

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

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

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

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

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

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

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

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

6:39-1.5 Interpretation of data

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

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

(c) (No change.)

6:39-1.6 Recognition of excellence

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

6:39-1.7 Exclusion of pupils

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

(a)

STATE BOARD OF EDUCATION

Private Vocational and Correspondence Schools

Adopted Amendments: N.J.A.C. 6:46-4.1, 4.4 through 4.18 and 5.2

Adopted New Rules: N.J.A.C. 6:46-4.19 and 4.20

Proposed: February 6, 1989 at 21 N.J.R. 262(a).

Adopted: April 5, 1989 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: April 10, 1989 as R.1989 d.241, with technical changes not requiring additional public notice and comment (N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:4-10, 18A:4-15, 18A:7A et seq., 18A:54-6, 18A:54-10, 18A:69-1 et seq., 34:1A-38 and Public Law 98-524.

Effective Date: May 1, 1989.

Expiration Date: October 5, 1992.

Summary of Public Comments and Agency Responses:

COMMENT: The Department received one written commentary regarding the proposed amendments to N.J.A.C. 6:46-4.20. The commenter strongly endorsed the proposed rule.

RESPONSE: The Department agrees.

The Department is correcting upon adoption three spelling errors.

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

6:46-4.1 General provisions

(a) Institutions, courses and programs excluded from these rules are the following:

1.-6. (No change.)

7. Courses or programs conducted under contract with an employer, whether at the place of employment or elsewhere, at no cost

to the employee other than the cost of books, supplies, tools or equipment which become the property of the employee;

8. Courses or programs licensed by the State of New Jersey Casino Control Commission;

9. Ground and air flight training schools whose curricula and instructors are licensed and approved by the Federal Aviation Administration; and

10. Courses, programs or schools which are subject to approval or regulation by the State Board of Higher Education.

(b) (No change.)

(c) Each private vocational school director shall submit an annual pupil enrollment and tuition source report for the period July 1 through June 30 of the preceding school year on forms provided by the *[commissioner]* ***Commissioner***. The report shall include, but not be limited to, pupil admission and retention rates and sources of tuition paid by pupils. The report shall be submitted to the *[commissioner]* ***Commissioner*** no later than 30 calendar days after the close of the reporting period.

6:46-4.4 Private vocational school personnel qualifications

(a) (No change.)

(b) Qualifications of school personnel are as follows:

1. (No change.)

2. Qualifications of instructors shall indicate:

i. Competency in the subject(s) to be taught as demonstrated by one of the following:

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

(4) Obtaining a passing score on the written portion of the appropriate National Occupational Competency Examination.

(5)-(7) (No change.)

(8) Possession of a high school diploma or its equivalent and six years full-time employment in the skilled trade or technical occupation to be taught.

(9) Possession of a high school diploma or its equivalent and three years full-time employment in the business or service occupation to be taught.

ii. and iii. (No change.)

iv. Instructors demonstrating competency in the subject area in accordance with (b)2i(8) or (9) above shall have the periods of the full-time employment verified by the director by the obtaining of written statements from former employer(s) attesting that the potential instructor demonstrated competence in the range of tasks and skills the individual will teach.

v. A supervising instructor offering direction and guidance to other instructors shall meet the qualifications for instructor and have completed at least one year of full-time teaching in the occupational area taught by the instructors being supervised.

3. (No change.)

4. Persons utilized by the school for the purpose of recruiting students to enroll in the school shall be employees of the school and hold the title of admissions, field or sales representative and shall have participated in training by the director or owner to thoroughly familiarize the representative with the school's courses, programs, admission requirements, policies, regulations and completion requirements. Admissions, field or sales representatives shall not have authority to approve or sign the pupil financial loan or grant application.

6:46-4.5 School ownership and financial responsibility

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

(e) The private vocational school shall be required to submit to the Department, prior to initial approval and on an annual basis thereafter, an audit report containing financial statements prepared by a certified public accountant, licensed public accountant, registered municipal accountant or licensed public school accountant. The auditor shall determine whether the financial statements of the organization present fairly its financial position and the results of its financial operations and that they are in accordance with generally accepted accounting principles.

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

6:46-4.6 Courses or programs offered

(a) The private vocational school shall advertise and offer to the public as courses and programs approved by the Department only those courses and programs which have been reviewed, evaluated and approved by the Department.

(b) Each request for course or program approval submitted by the private vocational school shall contain sufficient information for proper evaluation. The information submitted shall include:

1. (No change.)

2. Specific vocational objective(s) of the course or program, to include occupational competencies the pupil will acquire;

3.-9. (No change.)

(c) In all shops or laboratories where there are physical hazards such as, but not limited to, moving machinery, possibility of fire, explosion or exposure to high voltage electricity, there shall be compliance with all local, State and Federal safety and health codes.

(d) An accredited private vocational school approved by the Commissioner may request that the Commissioner grant course or program approval in credit hours. The Commissioner may grant approval in credit hours for a course or program taught in an approved private vocational school provided the course or program approval request contains the information specified in (b) above. In addition, the number of credit hours requested must be in accordance with the conversion formula from clock hours to credit hours used by the appropriate accrediting agency recognized by the Commissioner and accepted by the Secretary of the United States Department of Education.

6:46-4.7 Tuition, fees and other charges

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

(d) Upon written notification of admission of the pupil to the school, the school may require the payment of a registration fee subject to the following:

1. The fee shall be credited to the pupil's tuition account;

2.-3. (No change.)

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

(g) Required pupil books, equipment and supplies shall be itemized with the approximate cost to the pupil. The school shall not require pupils to purchase the books, equipment and supplies from the school if such items are available on the general market.

(h)-(i) (No change.)

(j) All refunds due pupils shall be processed and sent to the pupil no later than 30 calendar days after the date of termination of enrollment of the pupil by the school or receipt by the school of notification from the pupil of withdrawal from the school.

6:46-4.8 Enrollment agreement

(a) The private vocational school shall use an enrollment agreement which shall be the contract between the school and the pupil. This agreement shall:

1. Be prepared in duplicate, dated and signed by the pupil and an appropriate school official. In the case of a minor, both the pupil and a parent or legal guardian must sign. The pupil shall be furnished a copy of the agreement;

2.-6. (No change.)

(b) (No change.)

(c) The enrollment agreement may be executed at the school, the pupil's home or by mail. The agreement shall not become binding until three business days after signing by both parties. The enrollment agreement shall be signed by the school owner, director or other appropriate school official designated in writing by the owner or director. An appropriate school official shall not be an admissions, field or sales representative.

(d) (No change.)

6:46-4.9 Refund policy

(a) In the event of notification by the pupil of withdrawal from the school or termination by the school prior to the completion of the course or program, the following considerations shall determine the maximum obligation of the pupil. (The school may determine its refund policy to the pupil on a more liberal basis.)

1. (No change.)

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2. The school may require that all books, equipment and tools purchased from the school and issued to the pupil be retained by the pupil. However, the school may refund a portion of the monies paid if the books, equipment and tools are in proper condition for resale.

3. (No change.)

6:46-4.10 School bulletin

(a) (No change.)

(b) The school bulletin shall be the official statement of the school's policies, regulations, charges and fees and shall include, but not be limited to, the following items:

1.-5. (No change.)

6. School policy and regulations on standards of progress required of the pupil. This policy shall define the grading system of the school, the minimum grades required to remain in school, consequences for unsatisfactory grades or progress, a description of the probationary period, if any, allowed by the school and conditions for readmission following a dismissal for unsatisfactory progress, attendance or behavior. A statement shall be made regarding what constitutes the record of academic progress maintained by the school and the record of academic progress shall be provided to the pupil;

7.-15. (No change.)

16. A statement that pupils not meeting the school admission requirements and requiring remedial education programs shall receive information from the director on the availability of remedial programs from adult learning centers listed in the "Adult Education Program Directory" published by the Division of Adult Education, New Jersey Department of Education and sent to each school by the Department.

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

6:46-4.11 School records

(a) Private vocational schools shall maintain records which include, but are not limited to, the following:

1. (No change.)

2. Pupil records for every pupil admitted shall be maintained for a period of five years. The records shall include, but not be limited to:

i.-ii. (No change.)

iii. Placement data on pupils who complete the program indicating the employer, date of hire, job title and starting salary attested to by the pupil or verified by the school;

iv.-vi. (No change.)

3.-4. (No change.)

6:46-4.12 Conduct of the school

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

(c) A pupil not meeting the minimum educational requirement prescribed in (b) above may be admitted by the school on the ability to benefit from the education or training offered by the private vocational school as determined by the school director. Prior to admission, pupils shall be administered and pass a nationally recognized standardized or industry-developed test measuring the applicant's ability to successfully complete the program for which applied. Based on the test results, the director shall determine whether the pupil can benefit from the course or program and be admitted to the school. A copy of the test(s) used and the minimum passing score(s) required by the school shall be forwarded to the Assistant Commissioner, Division of Vocational Education.

(d) Applicants unable to satisfy the admissions testing requirements specified in (c) above shall not be admitted to the private vocational school. The director of the school shall provide the pupil with information regarding the availability of remedial education programs at adult learning centers. Locations of the centers are contained in the "Adult Education Program Directory" available from the Division of Adult Education, New Jersey Department of Education. Following the remedial or developmental education program, the pupil may be re-evaluated by the director for compliance with admission requirements or ability to benefit criteria.

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

6:46-4.13 Publicity, advertising and solicitation of students

(a)-(i) (No change.)

(j) A guarantee of placement for graduates shall not be promised or implied by any school, owner, partner, officer, employee, agent or salesperson thereof. Placement statistics shall not be advertised or appear in any school document unless they are verified by the school to the Department. No school, in its advertising or through the activities of its owners, officers or representatives shall guarantee or imply the guarantee of employment or of any certain wage or salary.

(k) (No change.)

6:46-4.14 Scholarships and financial assistance

(a) Schools may offer financial assistance and/or scholarships as follows:

1. Loan or deferred payments may be made to worthy students. Interest on loans shall not exceed the prime interest rate plus 2.5 percent in effect 30 days in advance of the loan;

2.-4. (No change.)

6:46-4.15 Period of approval of school and school personnel

(a) (No change.)

(b) Such school shall file an application for renewal of approval not later than 60 calendar days prior to the expiration of the certificate of approval. The renewal application shall contain a copy of all external audits and program reviews conducted regarding the school since the last approval. If the school submits the application for renewal by the submission deadline, the school may continue to operate with the existing certificate of approval until such time as the Commissioner determines that the school is not eligible for reapproval or the new certificate of approval is issued.

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

6:46-4.16 Violations of rules

(a) (No change.)

(b) Prior to the revocation or withholding of a certificate of approval the Commissioner shall direct the owner of the school to show cause why such sanctions shall not be imposed in accordance with the procedure established under N.J.A.C. 6:24-3.1.

(c) (No change.)

(d) The Commissioner shall notify all relevant agencies, including but not limited to, accrediting agencies, the Department of Higher Education, New Jersey Higher Education Assistance Authority and other student loan guarantors when the approval of an approved private vocational school is revoked or withheld by the Commissioner.

6:46-4.17 Conformity with existing rules

The granting of approval to operate a private vocational school by the Commissioner shall not waive any requirements established by legally constituted commissions or other local, State or Federal laws or rules and regulations.

6:46-4.18 Procedures for monitoring private vocational schools

(a) The Commissioner shall monitor each approved private vocational school prior to December 31, 1989. After January 1, 1990, each approved private vocational school staff shall be monitored at least once every two years.

(b)-(g) (No change.)

6:46-4.19 Fees required for administering the registration and approval process of private vocational schools

(a) Application for initial approval to operate a private vocational school in New Jersey shall be submitted to the Commissioner for approval in accordance with N.J.A.C. 6:46-4.15(a).

1. A preliminary submission consisting of the following application components shall be forwarded to the Commissioner for review and approval:

i. A letter of intent to seek a certificate of approval to operate a private vocational school;

ii. A copy of the course(s) or program(s) proposed to be offered detailing information as prescribed in N.J.A.C. 6:46-4.6(b);

iii. Information required regarding the proposed owner(s) as prescribed in N.J.A.C. 6:46-4.5(a); and

iv. Twenty-five percent of the required fee described and in the method described in (d) and (e) below.

2. Upon approval of the preliminary submission, the remainder of the required application components shall be forwarded to the Commissioner for review and approval with the remaining 75 percent of the fee described in (e) below.

(b) Each application for annual renewal of the certificate of approval to operate a private vocational school in New Jersey shall be submitted in accordance with N.J.A.C. 6:46-4.15(b) and shall be accompanied by the required fee in the amount and method described in (d) and (e) below.

(c) A private vocational school located outside the State of New Jersey shall not permit a marketing representative or other agent of the out-of-State school to recruit New Jersey residents within the borders of New Jersey until the school and agent are approved by the Commissioner to conduct business in New Jersey in accordance with the rules contained in this subsection.

1. The following must be submitted for review and approval by the Commissioner before an initial certificate of approval to conduct business in New Jersey may be issued:

i. A letter of intent to recruit New Jersey residents from the owner(s) or director of the school;

ii. Evidence that the school and courses and programs offered are approved by the appropriate approving agency of the state in which the school is headquartered;

iii. Evidence that tuition, fees and other charges are developed and administered as specified in N.J.A.C. 6:46-4.7;

iv. An enrollment agreement that meets the requirements specified in N.J.A.C. 6:46-4.8 and contains a statement of a refund policy which complies with N.J.A.C. 6:46-4.9;

v. A copy of the current school bulletin or catalog which includes courses and program outlines offered;

vi. Copies of publicity and advertising materials to be used to recruit New Jersey residents which meet the requirements specified in N.J.A.C. 6:46-4.13;

vii. Completed applications for the registration of each marketing representative or agent of the school who will recruit New Jersey residents on the application form provided by the Commissioner; and

viii. The required fees in the amount and method of payment described in (d) and (e) below.

2. Sixty days prior to the expiration date of the initial certificate of approval to conduct business in New Jersey, the following must be submitted to the Commissioner for review and approval to renew the certificate of approval:

i. Items identified in (a) i through viii above; and

ii. A letter of request that the marketing representative(s) or agent(s) previously registered continue to be registered; and

iii. Completed applications for each new or additional marketing representative(s) or agent(s) submitted on the application form provided by the Commissioner.

3. The Commissioner shall prescribe the annual effective starting and expiration dates of the certificate of approval to conduct business in New Jersey and the registration of each marketing representative(s) and agent(s).

4. Annual pupil enrollment and tuition source reports providing information pertaining to New Jersey residents in attendance at the out-of-State school shall be reported in accordance with N.J.A.C. 6:46-4.1(c).

5. The Commissioner may revoke the certificate of approval to conduct business issued to the out-of-State school or the registration of the marketing representative(s) or agent(s) for good cause in accordance with the provisions of N.J.A.C. 6:24-3.1.

6. When an out-of-State school is found operating in violation of this subsection, the owner(s) or director of the school will be notified of the violations, in writing, by the Commissioner and given 20 working days to comply with these provisions. If the school does not comply within the time period specified, the Commissioner may seek the assistance of the Attorney General to enjoin further operation of the school or take such other action as the Commissioner deems appropriate consistent with the enforcement of N.J.S.A. 18A:69-1 et seq.

(d) General requirements regarding the payment of required fees are as follows:

1. Payment will be in the form of a certified check or money order in the appropriate amount made payable to the "Treasurer, State of New Jersey";

2. The required fees are non-refundable;

3. Review and approval actions required by this subchapter will not be undertaken until the required fee payments are received; and

4. Non-payment of the required fees shall be cause for the Commissioner to revoke a certificate of approval to operate a private vocational school.

(e) The following specific fees are required and became effective on January 7, 1988, as per N.J.S.A. 18A:69-2 and 3:

1. Each initial application for a certificate of approval to operate a private vocational school in New Jersey—\$700.00 for each of the first 10 school sites and \$70.00 for the 11th and each additional site;

2. Each annual request for renewal of a certificate of approval to operate a private vocational school in New Jersey—\$450.00 for each of the first 10 school sites and \$45.00 for the 11th and each additional site;

3. Each out-of-State school site requesting an initial one year certificate of approval to recruit in New Jersey in accordance with this subsection—\$700.00;

4. Each out-of-State school site requesting an annual renewal of certificate of approval to recruit in New Jersey—\$450.00; and

5. Each initial and annual request to register an out-of-State marketing representative or agent to recruit New Jersey residents—\$25.00.

6:46-4.20 Recognition of accrediting agencies

(a) The Commissioner may recognize the institutional and programmatic accreditation granted to a school by an accrediting agency recognized by the United States Secretary of Education.

(b) Such recognition by the Commissioner shall be subject to the following:

1. The accredited school shall comply with laws and the *[rules]* *rules* of the New Jersey State Board of Education;

2. The recognition of accreditation shall apply only to courses or programs that were evaluated and recognized by the accrediting agency;

3. Recognition of accredited status shall permit a school to apply for approval under the provisions of 38 U.S.C. §1775, for the purpose of training veterans and other eligibles; and

4. The accrediting agency shall notify the Commissioner of planned accrediting or reaccrediting evaluation visits and invite a member of the Department to participate on the evaluation visit.

6:46-5.2 Standards for correspondence schools

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

(d) Qualifications of instructional staff requirements:

1.-2. (No change.)

3. Qualifications of supervisors of correspondence instruction shall indicate competency in the subject(s) which he or she will evaluate as demonstrated by meeting the qualifications identified in N.J.A.C. 6:46-4.4(b)2 i through iv.

(e) School ownership and financial responsibility requirements:

1.-4. (No change.)

5. The correspondence school shall be required to submit to the Department, prior to initial approval and on an annual basis thereafter, an audit report containing financial statements prepared by a certified public accountant, licensed public accountant, registered municipal accountant or licensed public school accountant. The auditor shall determine whether the financial statements of the organization present fairly its financial position and the results of its financial operations and that they are in accordance with generally accepted accounting principles.

6.-7. (No change.)

(f)-(o) (No change.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Coastal Permit Program Rules and Waterfront Development

Adopted: N.J.A.C. 7:7-2.3

Proposed: January 3, 1989 at 21 N.J.R. 4(a).

Adopted: April 11, 1989 by Christopher J. Daggett,

Commissioner, Department of Environmental Protection.

Filed: April 11, 1989 as R. 1989 d. 243, with **substantive and technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3, 13:1D-1 et seq., 13:19-1 et seq., 13:9A-1 et seq., and 12:5-1 et seq.

DEP Docket Number: 047-88-12.

Effective Date: May 1, 1989.

Expiration Date: May 7, 1989.

Summary Of Public Comments and Agency Responses:

Notice of the proposed amendment to the Coastal Permit Program Rules and Waterfront Development was published on January 3, 1989 in the New Jersey Register at 21 N.J.R. 4(a). Public hearings concerning the proposal were held on January 19, 1989 at the Old County Courthouse, Main Street (Route 9), Cape May Courthouse, New Jersey, and on January 20, 1989 at Belmar Municipal Complex, Borough Courtroom, 601 Main Street, Belmar, New Jersey. By notice published on February 6, 1989 at 21 N.J.R. 267(a), the Department extended the period for the submission of comments from February 2, 1989 to February 20, 1989.

Approximately 135 people attended the hearings and 20 presented testimony. During the comment period, the Department received 60 pieces of correspondence containing comments addressing the proposed amendment. Of that number, approximately 43 were in the form of post cards expressing strong opposition to the "continuation of Governor Kean's 'Emergency Order' involving coastal development."

COMMENT: Forty-three commenters submitted post cards objecting to the "continuation of Governor Kean's 'Emergency Order' involving coastal development."

RESPONSE: On October 3, 1988, the Department adopted the amendment to the rules on waterfront development at N.J.A.C. 7:7-2.3 (rule), by emergency proceedings, that expanded the area of Department regulation pursuant to the Waterfront Development Act, N.J.S.A. 12:5-1 et seq., in the CAFRA area (that is, the area defined in the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.). Concurrently, the Department proposed the same amendment by ordinary proceedings in order to continue the effect of the amendment beyond 60 days. The Department found that the "permanent" rulemaking (that is, rulemaking by ordinary proceedings), as refined by the current amendment, is necessary to effect supplementary land use control in the CAFRA area. A detailed discussion of the need for such a rule was provided in the New Jersey Register at 21 N.J.R. 34(a).

COMMENT: The Department is not regulating but legislating by greatly expanding the area subject to the regulation by including physiographic features, such as dunes and wetlands and a minimum buffer of 100 feet. This regulated area exceeds the waterfront area originally intended in the Waterfront and Harbor Facilities Act (Waterfront Development Act) and stretches several thousand feet inland away from the immediate waterfront area.

Another commenter stated that control over development and redevelopment should be exercised within a 1,000 foot buffer even where there is a permanent building closer than 1,000 feet to the baseline.

RESPONSE: It is the Department's position that it has not expanded the purview of its enabling legislation by asserting jurisdiction over the upland areas that are adjacent to the waterfront and waterways. This matter is the subject of ongoing litigation in *Last Chance Development Partnership v. Thomas H. Kean*, Docket Nos. A-863-88T5F and A-1929-88T5F (Consolidated). The Superior Court of New Jersey, Appellate Division, on April 7, 1989 found against the Department in this matter. The Department respectfully disagrees with the holding of the Appellate Division and will be filing for certification with the New Jersey Supreme Court. The Department notes that on April 10, 1989 the Ap-

pellate Division found sufficient merit in the Department's position to issue a stay of its own decision, pending the decision of the Supreme Court to grant certification.

The Waterfront Development Act was enacted in response to a need for the State to assume a direct role in the regulation of waterfront development. In its Fourth Preliminary Report to the Legislature (1914), prior to passage of the law, the temporary New Jersey Harbor Commission at page 6 recommended direct State control over the "waterfront, the waterways and the upland adjacent thereto." The Waterfront Development Act, therefore, was intended to authorize the regulation of uplands as well as water areas. At the time that the Department's program was established, the Department limited the application of the rules to construction at or below the mean high water line in all areas subject to CAFRA area jurisdiction. The rate of development taking place at that time in the CAFRA area was found to be less intensive than that in the northern, non-CAFRA area and it was felt that upland regulation was not necessary. In time, however, it became apparent that the cumulative effects of development in this upland area do have an adverse impact upon waterfront resources. Expansion of the waterfront program to the upland area was found to be necessary to help lessen these cumulative adverse impacts.

The Department has chosen to regulate development between the water's edge and the first significant property use as the most reasonable way to control haphazard development. The Department recognizes that any development that occurs within 100 feet from the most inland beach, dune, wetland or other water area (baseline) has a greater potential to adversely impact the waterfront than does development more inland and requires a permit for all such development regardless of the location of the first significant land use. Between the minimum 100 feet and the maximum 1,000 feet from the baseline, the inland limit of jurisdiction is determined based on the location of existing permanent buildings, because, inland of the first permanent building, a limitation on further construction would ordinarily not significantly affect the waterfront area. The amendment limits the Department's jurisdiction under the Waterfront Development Act to no greater than the first 1,000 feet from the baseline.

COMMENT: Regarding N.J.A.C. 7:7-2.3(a)2ii, the Department needs to clarify what constitutes the baseline from which the 1,000 feet regulatory jurisdiction is determined.

RESPONSE: This rulemaking limits the inland scope of the regulated waterfront area to 1,000 feet as "measured from the most inland beach, dune, wetland or other water area, as these terms are defined in N.J.A.C. 7:7E . . ." As expressly stated in the rule at N.J.A.C. 7:7-2.3(a)2, each of these terms is defined in the Department's Rules on Coastal Resources and Development at N.J.A.C. 7:7E. Staff of the Division of Coastal Resources, Bureau of Coastal Enforcement and Field Services, are available to determine the extent of these features on a site specific basis.

COMMENT: The permit exemption contained in N.J.A.C. 7:7-2.3(d)8 should include exemptions for all projects that have obtained the necessary permits and approvals, not simply single family dwelling units.

RESPONSE: The "grandfather" provisions of the rule received more comment than any other aspect of the emergency rule proceedings.

The subject amendment reflects the balanced consideration by the Department of the fact that (a) the emergency nature of the proceedings did, without any advance notice, subject many projects that had all local approvals to the requirement of an additional permit; and (2) that these same projects, when taken collectively, contributed to the peril posed by continued waterfront development in the coastal area without adequate safeguards. The permitting statistics indicate that 96 percent of the projects reviewed since the emergency adoption of this rule on October 3, 1988 have been approved, but only after the additional safeguards of the Department's Coastal Resource and Development Policies, N.J.A.C. 7:7E, have been incorporated as part of the development and site design. Of the 426 applications received, 275 were for single-family dwellings, 68 were two- or three-unit projects, 40 were for commercial projects, 27 were for four- to 15-unit projects and 16 were for 16- to 24-unit projects. More expansive exemptions than those provided in this adopted amendment would undermine the purpose and intent of the rule.

COMMENT: The Department has not identified the "countless incidents where waterfront construction has caused serious adverse environmental effects."

RESPONSE: The Department, on January 3, 1989, at 21 N.J.R. 35, referenced a number of studies on the effects of intense development on New Jersey's coastal area. As an example, the Blue Ribbon Panel on Ocean Incidents—1987 noted in its report:

The Panel regards the rate and type of construction and coastal land use as one of the most critical issues facing New Jersey. The density of development and the intensity of land and water use along the islands, bays, and estuaries of New Jersey place exceptional pressures on aquatic ecosystems. This occurs through habitat destruction and by point and nonpoint sources of contaminants and nutrients. Development also can reduce access to beaches, water, and waterfront facilities used by fisheries and other water dependent industries. Poorly controlled use of the land has resulted in destruction of valuable resources that citizens come to the coast to enjoy . . .

The Panel noted that coastal development was largely responsible for the threat to ocean and estuarine water quality:

Working groups from the National Oceanographic and Atmospheric Administration, the [United States Environmental Protection Agency] and international environmental organizations responsible for categorizing the effect of substances and activities on the water quality of coastal and estuarine habitats have ranked coastal development as causing the most degradation. In doing this, scientists have recognized that urbanization, industrialization and other development contribute significantly to the toxic contaminant load and the physical degradation of coastal areas . . .

The Panelists singled out much of the CAFRA zone as suffering coastal water pollution uniquely related to poorly controlled land development:

The pressures to expand the development of New Jersey's coastal zone are intense. As construction continues the stresses on the coastal waters, bays, and estuaries increase concomitantly. While it is true that coastal water pollution in Raritan Bay and along the Northern Monmouth County shoreline can be traced, in large part, to the urbanized region to the north, problems from southern Monmouth County to Cape May are generally localized and result largely from poorly controlled land development.

The Panel recognizes that the impacts of land development are difficult to quantify on an individual basis yet the cumulative effects are unmistakable and sometimes not easily mitigated. It is difficult to show that development of one lot on the dunes of a barrier island or on the border of a tidal marsh has a measurable impact on water quality or marine life. Yet, each disturbance adds to the total loading in the system in an incremental fashion. . .

The report noted repeatedly the incremental nature of the threat to New Jersey's shore:

The Panel recommends that the density of development on the coast should be lowered, because each new unit of development has an additive effect. For each home, condominium unit, or shopping center, there is a predictable amount of sewage and contaminants added to the local aquatic system. Beyond this, the physical presence of buildings, roadways, and associated parking areas results in the loss of habitat. This construction adds to the contaminant load due to surface runoff of exhaust materials, dripping oils and greases, and other organic chemicals . . .

The Panel, therefore, strongly recommended further controls on development, with an emphasis on establishment of a buffer zone:

The Panel concluded that the New Jersey coastline is a prime example of an overdeveloped coastal zone and that steps must be taken to limit further development on barrier islands, coastal beaches, wetlands, and along riverine systems leading to estuaries and wetlands. With proper buffer zones, setbacks, waste collection, sewage processing, and controlled use of these fragile habitats, it is possible to have development and the opportunity to use the coastal zone for everyone's full enjoyment and benefit . . .

Secondly, buffer zone requirements must be established and implemented to allow for the establishment of strips of land adjacent to bays, estuaries, and wetlands, as well as riverine systems leading to these.

COMMENT: Several commenters were concerned that the subject rulemaking constituted a moratorium on new development and requested that longtime property owners interested in building single family dwelling units be exempt.

RESPONSE: The rule does not impose a moratorium and does not prohibit construction within the identified waterfront area. Instead, it requires that a Waterfront Development Permit be obtained for all non-exempted projects. All such projects must comply with the Department's Coastal Resource and Development Policies (N.J.A.C. 7:7E). As with most permit programs, this process provides an appeal procedure (see N.J.A.C. 7:7-5). No environmental basis exists for the requested exemption.

COMMENT: The proposed rulemaking is inconsistent with the Attorney General's Formal Opinion No. 6 and it is inappropriate for adop-

tion as a final rule. In particular, the Attorney General concluded that "the waterfront to be regulated under the law is no larger than the area of the first substantial land use that directly adjoins the water and not an area extending 1,000 feet inland." Further the Attorney General determined that "the law does not contemplate regulation extending automatically 1,000 feet inland."

RESPONSE: The rule does not automatically extend jurisdiction 1,000 feet inland and, therefore, is not, in the Department's opinion, inconsistent with Formal Opinion No. 6-1980. This matter is the subject of ongoing litigation as indicated above in the response to the second comment. The rule provides that the regulated area extends to the inland limit of the first property with a significant land use, that is a permanent building for residential, commercial or industrial use. The Department recognizes that, at some distance from the baseline, development ceases to represent a significant threat and has, therefore, by this amendment set the 1,000 foot mark inland from the baseline as an absolute limit.

COMMENT: The Department should amend the exemption concerning expansion or enlargement of an existing structure up to 1,500 square feet to allow unlimited expansion of existing single family structures provided that the enlargement meets all local building requirements and is used for residential purposes.

RESPONSE: The exemption allowing expansions or enlargements of 1,500 square feet or less provides significant latitude for on-site improvements without the need for a Waterfront Development Permit. More substantial enlargement has as much potential to cause adverse environmental impacts as does new development on undeveloped lots and, as such, should be subject to the standards contained in the Department's Coastal Resource and Development Policies, N.J.A.C. 7:7E.

COMMENT: The Department should exempt the repair or replacement of water utility pipelines from the provisions of N.J.A.C. 7:7-2.3.

RESPONSE: N.J.A.C. 7:7-2.3 has, since 1980, regulated the construction, reconstruction, alteration, expansion or enlargement of any structure, or the excavation or filling of any area within the waterfront area of the CAFRA and non-CAFRA portions of the coastal zone. Replacement or repair of pipelines typically involves significant earthwork and/or underwater excavation, both of which have the potential to adversely impact environmentally sensitive areas or water quality. The permit requirement is warranted to ensure that such work adheres to best management practices and applicable project acceptability standards. There is no basis to exempt this activity from the provisions of N.J.A.C. 7:7-2.3

COMMENT: The permit exemptions contained at N.J.A.C. 7:7-2.3(d) should be expanded to encompass any lots zoned for residential use having all State, county and municipal permits and for which a municipal building permit for a single family residence could have been obtained prior to October 3, 1988—provided that such lots do not require bulkheading or contain dunes, beach or wetlands. The commenter indicated that finished lots not involving beaches, dunes or wetlands would likely receive permit approval and that the permitting requirements add an unnecessary cost to buildings.

RESPONSE: The amended rule does provide for exemption of those single family residences that have all municipal permits prior to October 3, 1988 regardless of environmentally sensitive features. It does not, however, provide for any exemption of single family lots that appeared to be permissible prior to October 3, 1988. Such an expanded exemption would result in significantly greater adverse environmental impact. Accordingly, the Department has limited this exemption to approvals, thus balancing the equity of individuals who have gone through the local planning process with the environmental impact.

COMMENT: The Department does not take into consideration the increased economic burden on private citizens wanting to build or modify their homes resulting from "exorbitant" permit costs.

RESPONSE: The Department has taken into consideration the costs associated with permitting in the CAFRA area (see, in particular, Economic Impact published November 7, 1988 at 20 N.J.R. 2815(a)).

COMMENT: One commenter supported the rule and cautioned the executive and legislative branches of government not to weaken regulatory protections by exempting single family homes.

RESPONSE: The Department acknowledges support for additional safeguards for waterfront development. The Department, at the same time, is sensitive to the regulatory burden placed on those individuals who planned to build a single family home and who possessed, on or before October 3, 1988, all necessary municipal approvals and permits. The rule amendment exempts this small class of projects. N.J.A.C. 7:7-2.3(d) has been modified to clarify that such an approval and permit must still be in effect at the commencement of construction.

ADOPTIONS

COMMENT: One commenter characterized over-development and over-crowding as the greatest threat to Ocean County and the New Jersey shore. The commenter supported the need for strict requirements to obtain Waterfront Development Permits in order to protect the shore environment.

RESPONSE: The Department acknowledges that this commenter agrees that there is a need for additional regulatory controls in the shore area.

COMMENT: One commenter, while expressing strong support for the subject regulatory control over coastal development, opposed the total exemption from regulation of the reconstruction of single family homes. Since so much of the New Jersey coastline is already developed, the State must utilize its authority to control development as a necessary mechanism to protect coastal water quality and the coastal environment.

RESPONSE: The rule does not provide for an unlimited exemption from regulation of the reconstruction of single family homes. The unit must have existed on or before October 3, 1988. Permits will be required for reconstruction of a single family dwelling when that reconstruction results in a greater footprint or greater total area of the replaced dwelling unit and, in addition, exceeds the 1,500 square foot expansion or enlargement exemption. The Department finds that the exemption, so limited, will not significantly impact coastal resources.

COMMENT: The Department should work closely with the Department of Community Affairs to provide timely, adequate and responsive training for local construction officials.

RESPONSE: The Department agrees and will continue to work with the Department of Community Affairs on training programs for construction officials. These programs seek to familiarize local construction officials with the environmental approvals which are legal prerequisites to local building approvals and to improve the consistency of State and local decisions.

COMMENT: The provision of the rule proposing exemption of single family dwelling units that received local approval prior to October 3, 1988 should be expanded to also exempt duplexes.

RESPONSE: The Department disagrees. Duplexes represent a higher intensity land use with greater demands for potable water, sewer, etc. They are also distinguished from single family homes in that they generally represent a business investment rather than primary shelter for the single family property owner. Expansion of the exemption to encompass this additional class of projects is not consistent with the purpose of the rule.

COMMENT: The Department is attempting to circumvent the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., requirements for permitting facilities by establishing a separate and distinct permit program within the CAFRA region. CAFRA supersedes the broad-based 70-year-old Waterfront Development Act.

RESPONSE: It is the Department's position that the CAFRA program is separate and distinct from the Waterfront Development Program. CAFRA addresses large scale development within a greater area than that identified as the waterfront area. CAFRA was not intended to supersede the Waterfront Development Act. CAFRA, at N.J.S.A. 13:19-19, clearly provides that the Act "shall not be regarded as to be in derogation of any powers now existing and shall be regarded as supplemental and in addition to powers conferred by other laws. . . ." Prior to 1980, the Waterfront Development Act was applied generally to development in the waterfront area. Since 1980, the Department has regulated the upland area adjacent to all tidal waters outside of the CAFRA area. It chose to limit the application of the waterfront development program regulations within the CAFRA area to projects at or below the mean high water line because, at that time, development within the CAFRA area was found to be less intensive than in the northern, non-CAFRA area. Subsequently, expansion of the waterfront development program to the upland area in the CAFRA area was found to be necessary to help lessen the cumulative adverse impacts caused by development that has occurred more recently in this area.

COMMENT: The Department needs to clarify the extent to which an applicant can avail itself of multiple permit exemptions. In particular, under the proposed amendment, may a person demolish an existing structure and rebuild a new structure up to 1,500 square feet larger? Does the location on the site of the new structures in any way affect the exemption demonstration?

RESPONSE: The amended rule provides for the use of multiple permit exemptions. Demolition and reconstruction of a new single family residential dwelling unit that results in a footprint no greater than the original footprint and in a total area no greater than that of the dwelling unit

ENVIRONMENTAL PROTECTION

which is being replaced would be exempt. In addition, a 1,500 square foot expansion or enlargement of the same dwelling unit would also be exempt.

COMMENT: The landward boundary of the regulated waterfront area should be no more than 100 feet landward of the mean high waterline.

RESPONSE: The basis and background documents supporting the Department's finding of imminent peril (see 20 N.J.R. 2815(a)) indicate that a regulatory area determined by a line up to 1,000 feet inland from sensitive land features adjacent to tidal water is necessary. In many cases the sensitive features themselves extend further landward than 100 feet from the mean high water line. A 100 foot wide regulatory zone would not be sufficient to control the haphazard development in the waterfront area that this rule was designed to control.

COMMENT: The greatest contributor to water pollution is storm-water runoff and substandard treatment of wastewater effluent from antiquated municipal systems. The emergency order does nothing to correct this.

RESPONSE: The Department acknowledges the contributions to water pollution from these other sources and is continuing to move on several fronts to address point and non-point pollution. Currently the Coastal Resource and Development Policies provide at N.J.A.C. 7:7E-8.7 for the implementation of "best available technology to minimize off-site storm water runoff" proximate to the State's tidal waters and, as such, provide an important vehicle to effect water quality controls. These policies at N.J.A.C. 7:7E-8.4 impose standards for the control of wastewater effluent.

COMMENT: Single family construction is not, in isolation, a major contributor to coastal water pollution.

RESPONSE: As indicated in a response to an earlier comment, the Department is concerned with the cumulative effect of poorly controlled land development. Single family development, if not properly designed, collectively contributes to the pollutant loading of the State's waters.

COMMENT: The "statement of compliance" with all relevant coastal policies should, for projects of four family dwelling units or less, be made by the Department instead of by the applicant.

RESPONSE: To effect the most efficient use of Department staff resources, it is necessary to require that the applicant satisfy this requirement for all projects. For one to four dwelling unit size projects, this requirement is, in effect, an abbreviated inventory and assessment of impacts to environmentally sensitive features on site and imposes a lesser burden than for larger size projects. This application requirement facilitates permit review and significantly shortens the total review time from application submittal to permit issuance. Data to date indicate that 96 percent of these projects are approved and that average review time is 50 days.

Full text of the adoption follows (additions to proposal indicated in the boldface with asterisks*thus*).

7:7-2.3 Waterfront Development

(a) The waterfront area regulated under this subchapter is divided into three sections, and will vary in width in accordance with the following rules:

1. (No change.)
 2. Within the "coastal area" defined by section 4 of CAFRA (N.J.S.A. 13:9-4), the regulated waterfront area shall consist of the area described in (a)1 above, and extend inland to include an adjacent upland area measured from the most inland beach, dune, wetland or other water area, as these terms are defined in N.J.A.C. 7:7E, to the lesser of:
 - i. One thousand feet; or
 - ii. The inland limit of the first property associated with residential, commercial or industrial use that involves a permanent building based on property lines existing on October 3, 1988; provided, however, should the Division issue a Waterfront Development Permit after October 3, 1988 for a use involving a permanent building, upon project completion the inland limit for purposes of this subparagraph shall be the inland property boundary associated with this permit; and further provided that if the inland limit of the property is closer to the baseline than 100 feet, the waterfront area boundary shall be 100 feet inland from the baseline.
 3. (No change.)
- (b)-(c) (No change.)

(d) A permit shall be required in the waterfront area for the construction, reconstruction, alteration, expansion or enlargement of any structure, or for the excavation or filling of any area with the exceptions listed below:

1.-3. (No change.)

4. In the area defined at (a)2 above, the expansion or enlargement of any existing structure, conducted in one or more phases on or after October 3, 1988, such that the total area of all phases of expansion or enlargement is 1500 square feet or less; provided, however, the construction or the reconstruction of a bulkhead or other shore protection structure shall not be included in the calculation of expansion or enlargement area;

5.-7. (No change.)

8. In the area defined at (a)2 above, development consisting of one single-family residential dwelling unit for which all necessary municipal approvals and permits had been issued on or before October 3, 1988 ***and such approvals and permits are still in effect at the commencement of construction***;

9. In the area defined at (a)2 above, reconstruction of a single family residential dwelling unit which replaces or reconstructs a voluntarily demolished unit which existed on or before October 3, 1988, as long as such reconstruction or replacement does not result in a footprint or total area greater than that of the replaced dwelling unit.

(e) (No change.)

(f) A permit is required for the additional filling of any lands formerly flowed by the tide, if any filling took place after 1914 without the issuance of a tidelands grant, lease or license by the Department of Environmental Protection and Tidelands Resource Council or their predecessor agencies, even where such lands extend beyond the landward boundary of the upland area defined in paragraph (a)3 above.

1. (No change.)

(g) The subchapter shall not apply to any development or activity in the upland area defined in (a)3 above and in man-made waterways and lagoons for which on-site construction, including site preparation, was in progress on or prior to September 26, 1980 or to any development or activity in the upland area defined in (a)2 above for which on-site construction, excluding site preparation, was in progress on or prior to October 3, 1988. For the purpose of this section, "construction, excluding site preparation" encompasses improvements which include, but are not limited to, paved roads, curbs, and storm drains. In order for such improvements to be considered "in progress" on or before October 3, 1988, materials must have been brought to the site and partially installed on or before that date. For the purpose of this section, "construction, excluding site preparation" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction or structures.

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

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Safety and Health Standards for Public Employees Control of Hazardous Energy Sources

Adopted New Rules: N.J.A.C. 12:100-11

Proposed: March 6, 1989 at 21 N.J.R. 620(a).

Adopted: April 10, 1989 by Charles Serraino, Commissioner,
Department of Labor.

Filed: April 10, 1989 as R.1989 d.238, **without change**.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:6A-25 et seq.,
specifically 34:6A-30, 31 and 32.

Effective Date: May 1, 1989.

Expiration Dates: November 5, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

SUBCHAPTER 11. CONTROL OF HAZARDOUS ENERGY SOURCES

12:100-11.1 Purpose and scope

(a) This subchapter covers servicing or maintenance of machines or equipment in which the unexpected energization, start up, or release of stored energy could cause injury to employees, and establishes minimum performance requirements for the control of such hazardous energy. This subchapter does not address:

1. Construction, agriculture and maritime employment;

2. Installations under the exclusive control of electric utilities for the purpose of power generation, transmission and distribution, including related equipment for communication or metering;

3. Exposure to electrical hazards from work on, near, or with conductors or equipment in electric utilization installations, which is covered by Subpart S of CFR 29, Part 1910, U.S. Department of Labor Occupational Safety and Health Standards; or

4. Oil and gas well drilling and servicing.

(b) This subchapter is applicable to the control of energy sources during servicing or maintenance of machines or equipment with the following exceptions:

1. Work on plug and cord type electrical equipment, for which exposure to the hazards of unexpected energization, start-up, or the release of stored energy of the equipment is effectively controlled by other measures;

2. Hot tap operations involving transmission and distribution systems for substances such as gas, steam, water or petroleum products when they are performed on pressurized pipelines, provided that the employer demonstrates that continuity of services is essential, shut-down of the system is impractical, and documented procedures and special equipment are implemented which will provide proven effective protection for employees;

3. Normal production operations; or

4. Servicing or maintenance which takes place during normal production operations, such as lubricating, cleaning, and making minor adjustments and simple tool changes, if it is necessary to perform such servicing or maintenance with the machine or equipment energized, and if such servicing or maintenance is performed using alternative measures which the employer can demonstrate will provide effective protection.

(c) The purpose of this subchapter is to prevent injuries to employees from the unexpected energization, start-up or release of stored energy from machines, equipment, or processes when such employees are engaged in the activities listed in (a) above, and requires employers to establish and implement procedures for affixing the appropriate lockout/tagout devices to energy isolating devices, and to otherwise disable machines, equipment or processes to prevent unexpected energization, start-up or the release of stored energy.

12:100-11.2 Definitions

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

"Affected employee" means a person, other than the authorized employee, whose job includes activities covered by the standards set forth in this subchapter.

"Authorized employee" means a qualified person to whom the authority and responsibility to perform a specific lockout and/or tagout assignment has been given by the employer.

"Energized" means connected to an energy source (mechanical electrical, hydraulic, etc.) which has not been isolated.

"Energy isolating device" means a device that physically prevent the transmission or release of energy, including, but not limited to the following: mutually operated electrical circuit breakers; disconnect switches, manually operated switches; slide gates; slip blinds; line valves; blocks and similar devices used to block or isolate energy. The term does not include push buttons, selector switches, and other control circuit type devices.

"Energy source" means any electrical, mechanical, hydraulic, pneumatic, chemical, thermal, or other energy source that is capable of causing injury to employees.

"Hot tap" means a procedure used in repair, maintenance and service activities which involves welding a piece of equipment (pipelines, vessels or tanks) under pressure, in order to install connections or appurtenances. It is commonly used to replace or add sections of pipeline without the interruption of service for air, gas, water, steam, and petro-chemical distribution systems.

"Lockout/tagout" means the placement of a lock and a tag on the energy isolating device in accordance with an established procedure, indicating that the energy isolating device or the equipment being controlled shall not be operated until removal of the lock and tag.

"Normal production operations" means operations that include those activities which enable the machine or equipment to perform its intended production functions, and which are carried out by employees as part of the production process, with the machine or equipment energized.

"Qualified person" means a person who can demonstrate by experience or training the ability to recognize potentially hazardous energy and its potential impact on workplace conditions, and has the knowledge to implement adequate methods and means for the control and isolation of such energy.

"Servicing or maintenance" means functions that include workplace activities such as installing, construction, adjusting, setting up, inspecting and maintaining or repairing machines or equipment.

"Setting up" means any work that must be performed to place a machine or equipment in an operational mode.

"Tagout device" means a prominent warning device capable of being securely attached to an energy isolating device that identifies the applier or authority who has control of the energy control procedure, and contains information and/or instructions to prevent the operation of an energy isolating device.

12:100-11.3 General energy control

The employer shall ensure that before an employee performs any activities where the unexpected energization, start up or release of stored energy could occur and cause injury, all potentially hazardous energy sources shall be isolated, locked/tagged out and otherwise disabled in accordance with the provisions set forth at N.J.A.C. 12:100-11.10.

12:100-11.4 Procedures

(a) Procedures shall be developed, documented and implemented by the employer for the control of potentially hazardous energy when employees are engaged in the activities covered by this section.

(b) The procedure shall clearly and specifically outline the scope, purpose, responsibility, authorization, rules, and techniques to be applied to the control of hazardous energy, and measures to enforce compliance including, but not limited to, the following:

1. A specific statement as to the intended use of the procedure;
2. Specific procedural steps for the shutting down, isolating, blocking and securing (lock and tags) of energy;
3. Specific procedural steps for the removal and transfer of locks and tags and the responsibility for them; and
4. Specific requirements for testing a system to determine and verify the effectiveness of lockout/tagout and other energy control measures.

12:100-11.5 Protective materials and hardware

(a) Locks, tags, chains, adapter pins, or other hardware shall be provided by the employer for securing or blocking energy sources where necessary under this procedure.

(b) The lockout and tagout devices shall be singularly identified, shall be the only authorized device(s) used for locking out and tagging energy sources, shall not be used for other purposes, and shall meet the following requirements.

1. Durability: the devices shall be capable of withstanding the environment to which they are exposed for the maximum period of time that exposure is expected;
2. Standardized: the devices shall be standardized in at least one of the following criteria: color; shape; size type or format;

3. Substantial: locks shall be of such key code complexity that removal by any other means than the regular key would require excessive force or unusual techniques, such as metal cutting tools. Tags and attachment mechanisms shall be of such design that the possibility of accidental removal is minimized; and

4. Identifying: the devices shall include provisions for the identification of the employee(s) applying or authorizing the application of the device.

(c) Tagout devices/danger tags shall warn against hazardous conditions if the equipment is re-energized and shall include the legends: Do Not Start, Do Not Open, Do Not Close, Do Not Energize, or similar language.

12:100-11.6 Periodic inspection

(a) The employer shall conduct periodic inspections at least annually to ensure that the energy control procedures of this standard are being implemented. The inspections shall be:

1. Performed by an authorized employee other than the one implementing the energy control procedures; and

2. Designed to correct any deviations or inadequacies observed.

(b) The employer shall certify that the inspections have been performed. The certification shall identify the machines or equipment inspected, the date inspected and the name of the person performing the inspection.

12:100-11.7 Training and communication

(a) The employer shall provide training to ensure that the purpose and function of the energy control procedures are understood by employees and that the knowledge and skills required for the safe application and removal of energy controls are available as needed. The training shall include the following:

1. Authorized employees shall receive training in the recognition of applicable hazardous energy sources and in the use of adequate methods and means for energy isolation and control;

2. Affected employees shall be instructed in the purpose and use of the energy control procedure; and

3. All other employees whose work operations are or may be affected by the energy control procedure shall be instructed about the procedure and how it affects their work operations.

(b) Periodic retraining shall be provided by the employer for all authorized and affected employees whenever a periodic inspection pursuant to N.J.A.C. 12:100-11.6 reveals, or whenever the employer has reason to believe, that there are deviations from or inadequacies in the energy control procedure. The retraining shall reestablish employee proficiency and introduce new or revised control methods and procedures, as necessary.

(c) The employer shall certify that employee training has been accomplished and is being kept up to date. The certification shall contain the employee's name and dates of training.

12:100-11.8 Energy isolating devices

(a) Energy isolating devices that are used for the control of potentially hazardous energy sources, including valves, shall be marked or labeled to identify the equipment supplied and the type and magnitude of the energy being controlled, unless they are so positioned and arranged that those elements are evident.

1. Valves for machines or equipment shall be permanently marked or labeled; and

2. Valves for pipeline network process operations shall be:

- i. Permanently marked or labeled; or
- ii. Temporarily marked or labeled prior to each instance of initiation of work on the line.

(b) Energy isolating devices shall be operated only by authorized employees or under the direct supervision of authorized employees.

12:100-11.9 Notification of employees

Affected employees shall be notified by the employer or authorized employee of the application and removal of lockout and tagout controls whenever such controls directly affect their work activities. Notification shall be given before such controls are applied, and before they are removed from the equipment or process.

12:100-11.10 Application of control

(a) The established procedure for the application of energy control (lockout/tagout) shall cover the following elements and actions and shall be in the following sequence:

1. Machine or equipment shutdown: the machine or equipment shall be turned off or shut down by authorized employees using appropriate procedures;

2. Machine or equipment isolation: all energy isolating devices that are needed to control the energy involved shall be physically located and operated in such a manner as to isolate the machine or equipment from the energy source(s);

3. Lockout and tagout device application: appropriate and effective lockout and tagout devices shall be affixed to each energy isolating device by authorized employees, and shall prevent or inhibit reactivation of energy isolation devices and shall be used as follows:

i. Lockout devices shall be affixed in a manner that will hold the energy isolating devices in a "safe" or "off" position;

ii. Tagout devices shall be affixed in such a manner as will clearly indicate that the operation or movement of energy isolating devices from the "safe" or "off" position is prohibited; and

iii. Where a tag cannot be affixed directly to the energy isolating device, the tag shall be located as close as safely possible to the device, in a position that will be immediately obvious to anyone attempting to operate the device.

4. Stored energy: following the application of lockout and tagout devices to energy isolating devices, all potentially hazardous, stored or residual energy shall be relieved, disconnected, restrained, and/or otherwise rendered safe.

i. If there is a possibility of reaccumulation of stored energy to a hazardous level, verification of isolation shall be continued until the activity is completed, or until the possibility of such accumulation no longer exists.

5. Verification of isolation: prior to starting work on equipment or processes that have been locked out and tagged out, an authorized employee shall take the steps necessary to verify that isolation and de-energization of the machine or equipment has been accomplished. The steps shall ensure that the lockout and tagout devices are so positioned or located as to isolate and de-energize the equipment or process effectively in accordance with (a)2 and 3 above and that stored energy has been rendered safe in accordance with (a)4 above.

12:100-11.11 Release from control (lockout/tagout)

(a) Before lockout and tagout devices are removed and energy is restored to the machine or equipment, procedures shall be followed and actions shall be taken by an authorized employee to ensure the following:

1. The work area shall be inspected for removal of nonessential items and to ensure that components are operationally intact and that all employees have been safely positioned or removed; and

2. Lockout and tagout devices shall be removed from each energy isolating device by the employee who applied the device, with the exception that devices may be removed under the direction of an authorized employee under the following conditions, and only where the authorized employees follow specific procedures which have been developed for those conditions:

i. When the employee who applied a personal lockout/tagout device is not available to remove the device; and

ii. Unique operating conditions involving complex systems, where the employer can demonstrate that it is not feasible to do otherwise.

12:100-11.12 Additional requirements

(a) In situations where the energy isolating device(s) is locked and tagged, and there is a need to test or position the machine or equipment, the following sequence of actions shall be implemented:

1. Clear the machine or equipment of tools and materials and clear employees from the machine or equipment area in accordance with N.J.A.C. 12:100-11.11(a)1;

2. Clear the control of locks and tags with appropriate procedures in accordance with N.J.A.C. 12:100-11.11(a)2;

3. Energize and proceed with testing or positioning; and

4. De-energize all systems and reapply energy control measures in accordance with (d) below to continue the work.

(b) Whenever outside servicing personnel are to be engaged in activities covered by the scope and application of this subchapter, the plant or facility employer shall inform them of the lockout/tagout procedures used by the facility.

1. The plant or facility employer shall assure that the lockout/tagout procedures used by outside servicing personnel are compatible with existing in-plant procedures.

(c) When lockout and tagout devices are used by a crew, craft, department, or other group, the affected employees shall be afforded a level of protection equivalent to that provided by personal lockout and tagout devices.

1. Group lockout and tagout devices shall be used in accordance with the procedures required by N.J.A.C. 12:100-11.11(a)1, including, but not necessarily limited to, the following specific requirements:

i. Primary responsibility shall be vested in an authorized employee for a set number of employees working under the protection of a particular group lockout and tagout device;

ii. Provision for the authorized employee to ascertain the exposure status of individual group members with regard to the lockout and tagout of the equipment or process; and

iii. When more than one crew, craft, department, etc., is involved, the responsibility of the overall job-associated lockout/tagout control shall be assigned to an authorized employee designated to coordinate affected work forces and ensure continuity of protection;

(d) Specific procedures shall be implemented during shift or personnel changes to ensure the continuity of lockout and tagout protection in accordance with N.J.A.C. 12:100-11.11(a)1. These procedures shall be developed as follows:

1. For the orderly transfer of lockout and tagout devices between off-going and oncoming employees which will eliminate exposure to hazards from the unexpected energization, start-up, or the release of stored energy of the equipment or process; and

2. To ensure that the equipment or process is being maintained in a safe condition so as to permit continued work by employees following the transfer of control over lockout and tagout devices.

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(a)

NEW JERSEY COMMISSION ON SCIENCE AND TECHNOLOGY

Eligibility; Royalty Policy

Adopted Amendments: N.J.A.C. 12A:100-1.2, 1.3 and 1.4

Proposed: February 21, 1989 at 21 N.J.R. 433(a).

Adopted: March 27, 1989 by the New Jersey Commission on Science and Technology, James F. Mathis, Chairman.

Filed: March 30, 1989 as R.1989 d.225, **without change**.

Authority: N.J.S.A. 52:9X-1 et seq., specifically 52:9X-9m.

Effective Date: May 1, 1989.

Expiration Date: September 8, 1991.

Summary of Public Comments and Agency Responses:

No comments were received.

Full text of the adoption follows.

12A:100-1.2 Definitions

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

"Commission" means the New Jersey Commission on Science and Technology as established by N.J.S.A. 52:9X-1 et seq.

"Innovation partnership" means a specifically directed research project undertaken as a cooperative venture between an academic researcher and an industrial sponsor. The objective of these partner-

ships is to explore new areas of research in a given technology for the purpose of producing new concepts, materials, devices, processes or knowledge that will:

1. Enhance the research program and overall reputation of the academic institution;
2. Assist and advance the activities of the industries involved in the technology;
3. Permit the commercialization of cooperative research.

"Qualifying academic institution" means a regionally accredited four year academic institution of higher education in New Jersey, offering accredited baccalaureate degrees in science and/or engineering in fields pertinent to the Commission's sponsorship.

12A:100-1.3 Program description

(a) Innovation partnership grants will provide support for academic researchers conducting basic, applied or generic research in specified fields, and will be matched by funds provided by a New Jersey-based industry or business. The investment of the Commission will be used to support the cost of equipment, supplies and the faculty and graduate students assigned each research project. It is expected that the facilities required for the project will be provided by the academic institutions or industry sponsor and that indirect costs equal to no more than 10 percent of all direct costs, exclusive of equipment, will be charged to the Commission.

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

(d) In the event that revenues from the annual gross royalties, exclusive only of the inventor's share, received by the grantee, during the fiscal year (July 1 to June 30), as a result of any individual copyright or patent produced in whole or in part with the assistance of an innovation partnership grant award shall exceed an amount equal to 10 times the Commission's award, an amount equal to five percent of the annual gross royalties from that copyright or patent, exclusive of the inventor's share, shall be remitted to the Commission by the sponsoring institution within 90 days. The total royalties recovered by the Commission shall not exceed the Commission's original award.

12A:100-1.4 Submission of grant proposal

(a) The Commission will receive proposals for innovation partnership grants in specified fields from four year academic institutions of higher education in New Jersey offering accredited baccalaureate degrees in science and/or engineering in fields pertinent to the Commission's sponsorship. Three copies of the proposal must be submitted.

(b) (No change.)

HUMAN SERVICES

(a)

DIVISION OF WELFARE

Notice of Administrative Correction

General Assistance Manual

Application Process

N.J.A.C. 10:85-3.2

Take notice that the Division of Welfare has discovered an error in the text of N.J.A.C. 10:85-3.2(e)3iii. What appears as sub-subparagraph 1) was proposed and adopted as N.J.A.C. 10:85-3.2(e)4ii(1) (see 14 N.J.R. 956(a) and 14 N.J.R. 1398(a), respectively). In incorporating the amendment into the Code, the text was erroneously codified at N.J.A.C. 10:85-3.2(e)3iii(1). This mistaken codification was rectified through a notice of administrative correction (see 18 N.J.R. 307(b)); however, the text at N.J.A.C. 10:85-3.2(e)3iii(1) was not then deleted. The purpose of this notice is to delete this erroneously duplicated sub-subparagraph, which will now appear at only N.J.A.C. 10:85-3.2(e)4ii(1). This notice of administrative correction is made pursuant to N.J.A.C. 1:30-2.7(a)3.

Full text of the corrected rule follows (deletions indicated in brackets [thus]).

10:85-3.2 Application process

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

(e) Rules concerning verification and sources of evidence are:

1.-2. (No change.)

3. Sources of evidence:

i.-ii. (No change.)

iii. While it is usually desirable to obtain evidence in written form, personal inspection of records by the agency personnel, where permission can be secured, is an acceptable practice and is often quicker and simpler. See (e)5 below for recording of such information.

[(1) For situations of incomplete or inconsistent information about Unemployment/Disability Insurance benefits from the client himself/herself, or, where the agency experiences difficulty in security verification, the MWD may send Form PA-24 (Verification of Unemployment/Disability Insurance) to DPW, Attn: Integrity Control Section.]

4.-5. (No change.)

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

LAW AND PUBLIC SAFETY

(b)

DIVISION OF CONSUMER AFFAIRS

BOARD OF ACCOUNTANCY

Notice of Clarification Regarding Continuing Professional Education (CPE) Credit

N.J.A.C. 13:29-6.5(a)2i

Take notice that the Board of Accountancy offers the following explanation in order to clarify any possible misunderstanding relating to the earning of CPE credits for university or college courses (see N.J.A.C. 13:29-6.5(a)2i).

The "Summary of Changes Upon Adoption" published on April 3, 1989 at 21 N.J.R. 908(c), 909 states at Item 8, "The section now reflects the fact that applicants taking university or college courses will receive five credit hours for each semester credit earned (that is, 15 CPE credits would be earned for one three hour course). This sentence clearly does not mean that 15 CPE credits will be earned for merely being in a classroom for three hours. Rather, it means, as stated at N.J.A.C. 13:29-6.5(a)2i, "Applicants will receive five credit hours continuing education credit for each semester credit hour earned:" (emphasis supplied).

TRANSPORTATION

(c)

LOCAL AID

**New Jersey Transportation Trust Fund Authority Act
Federal Aid Urban System Substitution Program:**

County and Municipal Aid

Adopted Amendment(s): N.J.A.C. 16:20A-1.1, 1.3,

2.1, 2.2, 2.4, 3.1, 4.1, 4.2, 4.3, 4.4, and Appendices I and II

Adopted Repeals: N.J.A.C. 16:20A-1.4 and 1.5

Proposed: March 6, 1989 at 21 N.J.R. 623(a).

Adopted: April 6, 1989 by Robert A. Innocenzi, Deputy

Commissioner, Department of Transportation.

Filed: April 6, 1989 as R.1989 d.229, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13.31 et seq., and 27:7-47.

Effective Date: May 1, 1989.

Expiration Date: December 17, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

CHAPTER 20A
 NEW JERSEY TRANSPORTATION TRUST FUND
 AUTHORITY ACT FEDERAL AID URBAN SYSTEM
 SUBSTITUTION PROGRAM: COUNTY AND MUNICIPAL
 AID

SUBCHAPTER 1. GENERAL PROVISIONS

16:20A-1.1 Appropriation of funds

As a substitution for Federal Aid Urban System funds, New Jersey Transportation Trust Fund Authority Act funds are appropriated by the Legislature for the improvement of any public road or bridge under the jurisdiction of a county, regardless of location within that county, and any road or bridge located on the Federal Aid Urban System. Federal Aid Urban System Substitution funds may also be used for county and municipal public transportation projects and other transportation projects which a county or municipality may be authorized by law to undertake.

16:20A-1.2 (No change.)

16:20A-1.3 Minimum allotment

The State Aid allotment to each county and Jersey City and Newark shall result in a minimum amount of \$300,000 for transportation projects annually regardless of the combined total of their 1984 Federal Aid Urban System apportionment plus State match.

16:20A-1.4 (Reserved)

16:20A-1.5 (Reserved)

SUBCHAPTER 2. FEDERAL AND URBAN SYSTEM
 SUBSTITUTION PROGRAM: STATE AID

16:20A-2.1 Eligible costs

(a) Except as stated below, State participation in project cost shall be limited to 100 percent of the cost of construction including construction supervision, inspection and material testing. Except as hereinafter provided, the cost of design engineering and right-of-way acquisition shall be borne totally by the county and municipality.

1. Municipalities qualified by the Department of Community Affairs for Urban Aid funding under P.L. 1978, c.14 as amended by P.L. 1983, c.384 or for Depressed Rural Centers Aid may, at the discretion of the Department of Transportation, be reimbursed for design engineering and right-of-way acquisition in addition to the construction providing the amount does not exceed the total amount allocated for the project. (A list for Fiscal Year 1989 of eligible municipalities is appended to and incorporated herein by reference as Appendices I and II.)

2. (No change.)

16:20A-2.2 Project approval

(a) Annually, prior to September 30, each county and Jersey City and Newark will be advised for budgetary purposes of the amount of Federal Aid Urban System Substitution funds they can anticipate for the following calendar year. The Transportation Improvement Program with a State aid element or, at the discretion of the county and Jersey City and Newark, a Capital Transportation Program shall be submitted for approval by the Department prior to February 1 of the next succeeding calendar year.

1. Capital Transportation Programs shall be completed on forms provided by the State. Each project shall be listed by name and location with a brief description as to how each project conforms with the county's overall Transportation Plan. (In the case of Jersey City and Newark, conformity shall be with the Municipal Transportation Plan.)

2. Each program shall cover a four-year period and list the phase (engineering, right-of-way, construction) of each project to be undertaken in a specific year. A cost estimate shall be provided for each phase of work. This cost estimate shall indicate the amount of anticipated State participation and the amount of local participation. The total cost of work in the first year of the program (in which State participation is requested) shall not exceed the county's annual share of Federal Aid Urban System Substitution funds. The State reserves the right to recoup State Aid funds that are not obligated by a

State/County/Municipal Project Agreement within one year after the Department of Transportation approval of the County/Municipal Capital Transportation Program. Recouped amounts will remain within the allotted county and can only be reallocated by an approved agreement executed by the Department.

3. (No change.)

4. Each county and Newark and Jersey City shall make reasonable further progress in the attainment and maintenance of National Ambient Air Quality Standards consistent with the New Jersey State Implementation Plan.

5. The Department of Transportation shall advise each county and affected municipality within each county of specific project approvals prior to April 1.

6. Concurrently, each county/municipality will be required to execute State/County/Municipal Agreements for each project on forms provided by the State. Each agreement shall specify a date for the completion of the work. In the event work is not completed by that date, the State, at its discretion, may either grant a time extension or recoup the State funds for use on other eligible projects throughout the State.

7. (No change in text.)

16:20A-2.3 (No change.)

16:20A-2.4 Standards

(a) (No change.)

(b) Construction and materials shall conform with the current New Jersey State Department of Transportation—Standard Specifications for Road and Bridge Construction.

(c) (No change.)

SUBCHAPTER 3. PLANS AND SPECIFICATIONS

16:20A-3.1 Local government responsibility

(a) The local government shall be responsible for engaging a professional engineer licensed in the State of New Jersey to prepare construction plans and specifications and to provide construction engineering and inspection and material testing as required.

(b) The local government shall provide such maps, reports, construction plans and specifications and contract documents as may be required by the State.

SUBCHAPTER 4. CONTRACTS

16:20A-4.1 Award of contract

(a) (No change.)

(b) Fifteen calendar days prior to the time of advertisement, the local government shall submit the following to the Local Aid District Office:

1. and 2. (No change.)

(c) Within 30 calendar days following the receipt of construction bids, the local government shall submit the following to the Local Aid District Office:

1. and 2. (No change.)

(d) When all information relative to the bidding has been approved by the State, the local government shall be advised of the approval of the award of contract.

16:20A-4.2 Contract completion and payment

(a) The State will pay funds on a reimbursement basis after acceptance by the local government and the State of work completed. Progress payments may be made on a monthly basis when requested by the local government when the total amount of reimbursement requested is not less than \$5,000.

(b) When all the work has been completed satisfactorily, the local government shall prepare and submit to the Local Aid District Office the following:

1. (No change.)

2. A certification by the county/municipal chief financial officer that all expenditures are supported by a valid documentation and conform with the State agreement; and

3. (No change.)

ADOPTIONS

(c) After a final inspection of the completed work by the State, action shall be taken to reimburse the county/municipality.
 (d) (No change.)

16:20A-4.3 Cost of engineering, inspection and construction supervision

(a) (No change.)
 (b) Those qualified local governments desiring State participation in the cost of engineering shall submit to the Department of Transportation a list of the scope of services to be performed by the engineer. The State shall participate in accordance with the percentage range as outlined in the current policy and procedure of the Department concerning engineering fees.

(c) Payment for engineering fees shall be made on a reimbursement basis.
 (d) (No change.)

16:20A-4.4 Cost of right-of-way acquisition

(a)-(d) (No change.)
 (e) County and municipal governments requesting State participation in the cost of acquiring right-of-way shall submit appraisals of property to be acquired on appraisal forms provided by the Department of Transportation and which have been prepared in accordance with Department of Transportation standards and requirements.

(f) In advance of the institution of negotiations for any property, the appraisals shall be submitted by the concerned local government to the appropriate New Jersey Department of Transportation Right of Way Division District Office for review and a fair market value participation certification.

(g) Upon completion of the review in (f) above and the registration of the fair market value, the local government will be notified in writing by the State of the registered cost participation amount established as a result of the appraisal review for each parcel on the project. Subject to the availability of funds, the registered cost participation amount will govern the State's reimbursement participation for a particular parcel, except in condemnation awards resulting from contested court adversary proceedings.

(h) Subject to the availability of funds, the State will participate in the actual amount of such court awards providing they are not substantially in excess of the approved parcel participation amount in which instances, the concerned county or municipal government shall normally appeal the award.

(i)-(j) (No change.)
 (k) Reimbursement claims for lands and/or easements on approved projects and parcels shall be presented on invoice forms provided by the State accompanied by satisfactory evidence of legal ownership of the property by the local government, as applicable. Other costs incurred incidental to the right-of-way acquisition shall not be reimbursed.

(l) (No change.)
 (m) The procedures in this section are limited to direct State funded projects and are not applicable to Federally funded State-aid projects.

APPENDIX I

Municipalities Qualified for Depressed Rural Centers Aid

County	Municipality
Burlington	Beverly City
Burlington	Wrightstown Borough
Gloucester	Swedesboro Borough
Hunterdon	Califon Borough
Hunterdon	Frenchtown Borough
Hunterdon	Hampton Borough
Hunterdon	High Bridge Borough
Hunterdon	Lambertville City
Middlesex	Jamesburg Borough
Monmouth	Allentown Borough
Monmouth	Shrewsbury Township
Morris	Netcong Borough
Morris	Victory Gardens Borough

TRANSPORTATION

Ocean	Lakehurst Borough
Salem	Woodstown Borough
Somerset	South Bound Brook Borough
Sussex	Hamburg Borough
Union	Winfield Township
Warren	Alpha Borough

APPENDIX II

Municipalities Qualified for Urban Aid Funding

Asbury Park City	Mount Holly Township
Bayonne City	Neptune Township
Belleville Township	Newark City
Bloomfield Township	New Brunswick City
Bridgeton City	North Bergen Township
Camden City	Old Bridge Township
Carteret Borough	Orange City
Commercial Township	Passaic City
Deptford Township	Paterson City
East Orange City	Paulsboro Borough
Elizabeth City	Pemberton Township
Garfield City	Pennsauken Township
Glassboro Borough	Penns Grove Borough
Gloucester City	Perth Amboy City
Gloucester Township	Phillipsburg Town
Hamilton Township (Mercer)	Plainfield Township
Hillside Township	Pleasantville City
Hoboken City	Roselle Borough
Irvington Township	Salem City
Jersey City	Trenton City
Keansburg Borough	Union City
Kearny Town	Vineland City
Lakewood Township	Weehawken Township
Lindenwold Borough	West New York Town
Lodi Borough	Willingboro Township
Long Branch City	Winslow Township
Millville City	Woodbury City
Monroe Township (Gloucester)	

(a)

LOCAL AID

New Jersey Transportation Trust Fund Authority: Municipal Aid

Adopted Amendments: N.J.A.C. 16:20B-1.1 to 1.4, 2.1, 3.1, 3.2, 4.1 to 4.3, 5.1, and Appendices I and II

Proposed: March 6, 1989 at 21 N.J.R. 626(a).

Adopted: April 6, 1989, by Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.

Filed: April 6, 1989 as R.1989 d.228, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13.31 et seq., 27:7-47 and the New Jersey Transportation Trust Fund Authority Act, N.J.S.A. 27:1B-1 et seq.

Effective Date: May 1, 1989.

Expiration Date: December 17, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

CHAPTER 20B

NEW JERSEY TRANSPORTATION TRUST FUND AUTHORITY ACT: MUNICIPAL FUND

SUBCHAPTER 1. GENERAL PROVISIONS

16:20B-1.1 Appropriation of funds

New Jersey Transportation Fund Authority Act funds are appropriated by the Legislature as the State's share of the cost for the improvement of public highways under municipal jurisdiction.

16:20B-1.2 Standards

(a) The proposed road and bridge improvement projects shall conform to the design criteria of the appropriate American Association of State Highway and Transportation Officials publications listed below:

1. (No change.)
2. A policy on Geometrics Design of Highways and Streets, 1984;
3. (No change.)

(b) (No change.)

(c) Construction and materials shall conform with the current New Jersey State Department of Transportation Standard Specifications for Road and Bridge Construction.

16:20B-1.3 Resolutions, applications and agreements

(a) Each municipality may submit fully executed resolution, application and agreement forms for New Jersey Transportation Trust Fund Authority Act funds to the Local Aid District Office of the New Jersey Department of Transportation.

(b) Resolution, application and agreement forms are available to the municipalities at the district office.

16:20B-1.4 Procedures

(a) The resolution, application and agreement form provides for an engineering description of the existing road or bridge and the description of the proposed road improvement indicating the right-of-way width, paved and graded widths, shoulder widths, type and depth of proposed pavement and an estimate of the cost of the proposed work. The Local Aid District Offices will review the form for completeness, make a field investigation and evaluate all projects for which applications have been received.

(b) Projects for which applications have been received will be evaluated by a Screening Committee comprised of municipal engineers, representing a cross section of New Jersey, and staff of the New Jersey Department of Transportation appointed by the Commissioner of Transportation. Recommendations will be presented to the Commissioner of Transportation for consideration. In project approval, consideration is given to the volume of traffic, safety, service to the public, growth potential, readiness to construct and local taxing capacity.

(c) State aid funds for municipal projects in each county will be allocated according to the formula set forth in the legislation appropriating said funds. For the purpose of said formula, population figures will be obtained from the New Jersey Department of Labor and municipal road mileage will be determined by the New Jersey Department of Transportation.

(d) Separate from the State Aid formula appropriation, the Commissioner shall allocate \$5,000,000 to municipalities qualifying for urban aid under P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) in the same proportion that they receive aid under P.L. 1978, c.14. The proportion is determined by the Department of Community Affairs (a list of eligible municipalities for Fiscal Year 1989 is hereby incorporated by reference and attached as Appendix I).

(e) The Commissioner of Transportation may require the municipality to enter into an agreement that will determine a firm progress and funding schedule for each project funded under (d) above.

16:20B-1.5 (No change.)

16:20B-1.6 (No change.)

SUBCHAPTER 2. PLANS AND SPECIFICATIONS

16:20B-2.1 Municipal responsibility

(a) The municipality shall be responsible for engaging a professional engineer licensed in the State of New Jersey to prepare construction plans and specifications and to provide construction engineering and inspection and material testing as required.

(b) (No change.)

SUBCHAPTER 3. CONTRACTS

16:20B-3.1 Award of Contract

(a) The municipality shall advertise and award the contract, subject to the approval of the State, in accordance with the provisions of Local Public Contract Law, N.J.S.A. 40A:11-1 et seq.

(CITE 21 N.J.R. 1150)

(b) Fifteen calendar days prior to the time of advertisement, the municipality shall submit the following to the Local Aid District Office:

1. (No change.)
2. Two copies of the engineer's estimate cost.

(c) Within 30 calendar days, following the receipt of construction bids, the municipality shall submit the following to the Local Aid District Office:

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

16:20B-3.2 Contract completion and payment

(a) (No change.)

(b) When all work has been completed satisfactorily, the municipality shall prepare and submit to the Local Aid District Office the following:

1. (No change.)
 2. A certification by the municipal chief financial officer that all expenditures are supported by valid documentation and conform with the term of the State agreement; and
 3. (No change.)
- (c)-(d) (No change.)

SUBCHAPTER 4. STATE PARTICIPATION IN COST

16:20B-4.1 General requirements

(a) (No change.)

(b) Municipalities qualified by the Department of Community Affairs for Urban Aid funding under P.L. 1978, c.14, as amended by P.L. 1983, c.384 or for Depressed Rural Centers Aid may, at the discretion of the Commissioner of Transportation, be reimbursed for design engineering and right-of-way acquisition in addition to the construction providing that the amount does not exceed the total amount allocated for the project. (A list of eligible municipalities for Fiscal Year 1989 is hereby incorporated by reference and attached as Appendices I and II).

16:20B-4.2 Cost of engineering, inspection and construction supervision

(a) (No change.)

(b) Those qualified local governments desiring State participation in the cost of engineering shall submit to the Department of Transportation a list of the scope of services to be performed by the engineer. The State shall participate in accordance with the percentage range as outlined in the current policy and procedure of the Department concerning engineering fees.

(c) Payment for engineering fees shall be made on a reimbursement basis.

(d) (No change.)

16:20B-4.3 Cost of right-of-way acquisition

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

(e) Municipal governments requesting State participation in the cost of acquiring right-of-way shall submit appraisals of property to be acquired on appraisal forms provided by the Department of Transportation and which have been prepared in accordance with Department of Transportation standards and requirements.

(f) (No change.)

(g) Upon completion of the review in (f) above and the registration of the fair market value, the local government will be notified in writing by the State of the registered cost participation amount established as a result of the appraisal review for each parcel on the project. Subject to the availability of funds, the registered cost participation amount will govern the State's reimbursement participation for a particular parcel, except in condemnation awards resulting from contested court adversary proceedings.

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

(m) These procedures are limited to direct State funded projects and are not applicable to Federally funded State-aid projects.

SUBCHAPTER 5. AUDIT

16:20B-5.1 General provisions

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

(c) Department of Transportation agreements governed by this chapter shall be subjected to audit compliance tests in accordance with requirements delineated in the Department of Treasury, OMB publication entitled "New Jersey Grants Management Information System Manual".
 (d)-(e) (No change.)

APPENDIX I

Municipalities Qualified for Depressed Rural Centers Aid

Burlington	Beverly City
Burlington	Wrightstown Borough
Gloucester	Swedesboro Borough
Hunterdon	Califon Borough
Hunterdon	Frenchtown Borough
Hunterdon	Hampton Borough
Hunterdon	High Bridge Borough
Hunterdon	Lambertville City
Middlesex	Jamesburg Borough
Monmouth	Allentown Borough
Monmouth	Shrewsbury Township
Morris	Netcong Borough
Morris	Victory Gardens Borough
Ocean	Lakehurst Borough
Salem	Woodstown Borough
Somerset	South Bound Brook Borough
Sussex	Hamburg Borough
Sussex	Sussex Borough
Union	Winfield Township
Warren	Alpha Borough

APPENDIX II

Municipalities Qualified for Urban Aid Funding

Asbury Park City	Mount Holly Township
Bayonne City	Neptune Township
Belleville Township	Newark City
Bloomfield Township	New Brunswick City
Bridgeton City	North Bergen Township
Camden City	Old Bridge Township
Cartaret Borough	Orange City
Commercial Township	Passaic City
Deptford Township	Paterson City
East Orange City	Paulsboro Borough
Elizabeth City	Pemberton Township
Earfield City	Penns Grove Borough
Hassboro Borough	Pennsauken Township
Hiloucester City	Perth Amboy City
Hiloucester Township	Phillipsburg Town
Hamilton Township (Mercer)	Plainfield Township
Hillside Township	Pleasantville City
Joboken City	Roselle Borough
Livington Township	Salem City
Lersey City	Trenton City
Leansburg Borough	Union City
Learny Town	Vineland City
Lakewood Township	Weehawken Township
Lindenwold Borough	West New York Town
Lodi Borough	Willingboro Township
Long Branch City	Winslow Township
Millville City	Woodbury City
Monroe Township	

(a)

CONSTRUCTION AND MAINTENANCE SUPPORT

**Bureau of Maintenance Engineering
 Reimbursed Highway Safety Lighting**

Adopted Amendments: N.J.A.C. 16:26-3

Proposed: March 6, 1989 at 21 N.J.R. 628(a).
 Adopted: April 6, 1989 by Robert A. Innocenzi, Deputy Commissioner, Department of Transportation.
 Filed: April 6, 1989 as R.1989 d.230, **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 52:14B-1 et seq.
 Effective Date: May 1, 1989.
 Expiration Date: August 6, 1989.

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

Full text of the adoption follows.

CHAPTER 26

BUREAU OF MAINTENANCE ENGINEERING

SUBCHAPTER 3 REIMBURSED HIGHWAY SAFETY LIGHTING

16:26-3.1 (No change.)

16:26-3.2 Inquiries

All inquiries regarding reimbursed highway safety lighting shall be referred to the Bureau of Maintenance Engineering, Division of Construction and Maintenance Engineering Support.

16:26-3.3 Investigations

The Bureau of Maintenance Engineering of the Division of Construction and Maintenance Engineering Support shall arrange for any necessary field investigations pertaining to requests by local governments for State participation in the cost of maintaining existing or proposed highway safety lighting. The Bureau of Electrical Engineering of the Division of Traffic Engineering and Local Aid shall conduct the necessary field investigations when requested by the Bureau of Maintenance Engineering. The results of the investigation are to be forwarded to the Bureau of Maintenance Engineering. The Bureau of Maintenance Engineering shall inform the local governments of the results of all investigations and a complete file of all transactions shall be part of the Bureau of Maintenance Engineering's records.

16:26-3.4 State aid participation basis

(a) The rate of reimbursement to county and local government shall be based on the preceding fiscal year appropriations for this program and the number and type of lighting units in the program.

1. Incandescent units will not be eligible for reimbursement.

2. Lamps with a lamp lumen output greater than or equal to 7,000 lumens but less than 11,000 lumens will be reimbursed at the base rate.

3. Lamps with a lamp lumen output greater than or equal to 11,000 lumens, but less than 20,000 lumens will be reimbursed at a rate of approximately 1.7 times the base rate.

4. Lamps with a lamp lumen output greater than or equal to 20,000 lumens will be reimbursed at a rate of approximately 2.5 times the base rate.

(b) (No change.)

(c) To be eligible for reimbursement, lighting units must be at least 7,000 lumen intensity and be of the arc discharge type.

16:26-3.5 Standards

Reimbursed highway safety lighting shall conform to the standards set by the Division of Construction and Maintenance Engineering Support as to location, lamp intensity, mounting height and type of luminaries.

16:26-3.6 Approval of agreement

(a) The Bureau of Maintenance Engineering of the Division of Construction and Maintenance Engineering Support shall not enter

into any contract obligations with utility companies on reimbursed safety lighting agreements.

(b) Upon approval of a safety lighting location and lamp size, an agreement and copy of a form of resolution is prepared by the Bureau of Maintenance Engineering for execution and adoption by the local government. One copy of the properly executed agreement is returned to the local government, indicating the number of lighting units and the amount of the State's participation in the cost of maintaining these units with the local government.

16:26-3.7 Termination of agreement

(a) If the Department decides to terminate the agreement, the Chief, Bureau of Maintenance Engineering, shall send written notice of intent to terminate to the local government. Formal Departmental action terminating the agreement shall be sent to the local government.

(b) If the local government decides to terminate this agreement, the Director, Division of Construction and Maintenance Engineering Support shall be notified in a form of resolution adopted by the local government. Formal Departmental action terminating the agreement shall be sent to the local government.

16:26-3.8 Extension of agreement

(a) (No change.)

(b) An agreement and a form of resolution for the ensuing year are prepared and mailed to the participating local government on or about December 15 by the Bureau of Maintenance Engineering. The full executed agreement shall be returned by the local government to the State on or before February 15 with a duly certified copy of the resolution.

16:26-3.9 Reimbursement

(a) (No change.)

(b) Reimbursement claims shall be paid semi-annually to the participating local government upon presentation of vouchers provided by the State. The local government shall provide the following certification statement on the invoice: "This is to certify that the lighting units described in the schedule attached to our reimbursement agreements have been in operation and are expected to remain in service during this 6 month certified period."

(a)

TRANSPORTATION OPERATIONS
Notice of Administrative Correction
Restricted Parking Stopping
Route 179 in Hunterdon County
N.J.A.C. 16:28A-1.53

Take notice that the adopted amendment to N.J.A.C. 16:28A-1.53, Route N.J. 179, which appeared in the February 21, 1989 New Jersey Register at 21 N.J.R. 453(b) contains erroneous language. The published codification of the rule as N.J.A.C. 16:28A-1.79 should instead be N.J.A.C. 16:28A-1.53.

In the text of N.J.A.C. 16:28A-1.53(c)ii(2), "Route 29" should have read "Route 179," and "where parking is prohibited at all times" should have read "where parking is regulated." The word "hours" in N.J.A.C. 16:28A-1.53(c)ii(1) and (2) should be singular. These administrative corrections are published pursuant to N.J.A.C. 1:30-2.7(a).

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

16:28A-[1.79]1.53 Route 179

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

(c) The certain parts of State highway Route 179 described in this subsection shall be designated and established as "time limit parking" zones where parking is [prohibited at all times] regulated. 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. In the City of Lambertville, Hunterdon County:
 - i. Along both sides:

(1) Two [hours] hour time limit along Route 179 from Lambert Lane to Route 29 from 10:00 A.M. to 6:00 P.M. Monday to Saturday;

(2) Two [hours] hour time limit parking along Route [29] 179 from Lambert Lane to Route 29 from 1:00 P.M. to 5:00 P.M. Sunday.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Wire Transfers of Funds

Adopted New Rules: N.J.A.C. 19:45-1.24A and 1.24B

Adopted Amendments: N.J.A.C. 19:45-1.1, 1.15 and 1.24

Proposed: December 5, 1988 at 20 N.J.R. 3012(a).

Adopted: April 6, 1989 by the Casino Control Commission, Walter N. Read, Chair.

Filed: April 6, 1989 as R.1989 d.233, 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. 5:12-63c; 69a; 70g, l and m; and 99.

Effective Date: May 1, 1989.

Expiration Date: March 24, 1993.

Summary Of Public Comments and Agency Responses:

Written comments on the proposed new rules and amendments were received from the Division of Gaming Enforcement (Division) and four casino licensees: Greate Bay Hotel and Casino, Inc. (Sands), Claridge a Park Place, Inc. (Claridge), Trump Castle Associates (Castle) and Marina Associates (Harrah's). In addition, the Commission held a public hearing on the rules and amendments on January 18, 1989, during which oral comments were received from Boardwalk Regency Corporation (Caesars) Trump Plaza Associates (Plaza) and the Division.

The comments submitted by Caesars, Plaza, Sands, Claridge and Harrah's all generally supported the adoption of the new rules and amendments as published. Castle and the Division submitted the following specific comments concerning the rules:

COMMENT: Castle suggested that N.J.A.C. 19:45-1.24A(c) and (h) be amended to eliminate the Wire Transfer Log, and that the information which would otherwise be recorded therein be included on the Wire Transfer Acknowledgment Form. According to Castle, this would eliminate the duplicate recording of information and streamline the document process by eliminating the need to compare the Log to the Forms.

RESPONSE: The Commission considers the acceptance of wire transfers to be a particularly sensitive transaction in the case since no instrument is presented to evidence the receipt of funds by the casino licensee. The internal control procedures which were published are designed to make it as difficult as possible for one person to perpetrate and conceal a fraudulent wire transfer transaction against the casino licensee. Therefore, Castle's comments are rejected.

COMMENT: Subsections (c) and (f) of N.J.A.C. 19:45-1.24A both require that the amount of funds transferred by wire be recorded in numbers and words. Castle believes the "words" requirement should be deleted since numbers are deemed to be sufficient for the multitude of other casino documents which must be prepared.

RESPONSE: The comment is rejected. As just noted, the receipt of funds by a casino licensee is usually supported by the receipt of a written instrument. The "words" requirement for wire transfers is intended to minimize errors by casino personnel in recording the amount of funds received pursuant to wire transfers.

COMMENT: Castle suggested that N.J.A.C. 19:45-1.24A(d) be amended to require that the name and title of the bank employee verifying a wire transfer need only be provided where the transfer notification occurred by telephone. According to Castle, the hard copy printout documents the notification when notice is received pursuant to N.J.A.C. 19:45-1.24A(b)2 or 3.

RESPONSE: Castle has apparently misread the requirements of N.J.A.C. 19:45-1.24A(d). The purpose of this subsection is to require independent telephone verification of every wire transfer regardless of the

method by which the casino licensee was originally notified by its bank. The comment is rejected.

COMMENT: Castle suggested that N.J.A.C. 19:45-1.24B(b) and (c) should be amended to allow patrons to request in writing the return of funds by wire transfer. Castle maintains that signature verification is sufficient to determine the validity of the request and the identity of the patron.

RESPONSE: The published proposed rule reflects the Commission's judgment that wire transfers from a casino licensee to a patron should only be permitted when the patron is physically present at the time the transfer is requested. This should enable the licensee to verify the identity of the patron and establish his or her entitlement to receive the funds at issue. Accordingly, Castle's comment is rejected.

COMMENT: The Division recommended that N.J.A.C. 19:45-1.24A be amended to require any casino licensee accepting a wire transfer to contact the sending financial institution to verify that the patron was authorized to wire funds from the account which was used. This comment was based on the Division's general belief that wire transfers for gaming purposes should not facilitate in any way illegal conduct which could reflect adversely on casino operations. The Division supported this position by quoting a prior Commission decision which concluded that "any fraud perpetrated against a casino has an adverse impact upon the integrity of the regulatory process and of casino operations within New Jersey." See, *State of New Jersey v. Resorts International Hotel, Inc., et al.*, Commission Docket No. 83-388, O.A.L. Docket No. CCC 1427-84 (CCC decision dated June 14, 1985). Therefore, the Division recommended that the "audit trail" governing wire transfers should be sufficiently detailed and comprehensive to act as a strong deterrent to the misuse of the wire transfer procedures by any person.

By way of analogy, the Division notes that N.J.A.C. 19:45-1.27(a)6ii prohibits the issuance of a counter check on any checking account other than a personal checking account of the patron. The Division thus concludes that N.J.A.C. 19:45-1.27(a)6ii is "designed to prevent the misuse of corporate funds for personal gaming activity" and that the procedures governing the use of wire transfers for cash deposits should not ease or circumvent this existing restriction on illegal conduct.

RESPONSE: The Commission certainly does not dispute its earlier statement "that any fraud perpetrated against a casino has an adverse impact upon the . . . regulatory process and . . . casino operations." But the Commission does not agree that the instant proposed rule will permit fraud against a casino. In its comments, the Division summarized various scenarios where a casino licensee may have been an unwitting conduit for funds transferred by wire where someone other than the casino, either the sending institution or some third party, may have been defrauded in some way. It is not clear how the casino could or should be held accountable for these situations. If anyone is at fault, the sending financial institution should have taken steps to assure the validity of the transfer and it is the sending financial institution which is potentially liable. The casino licensee, in accepting the wire transfer, should not generally be expected to do any more than comply with all relevant laws and procedures.

A casino licensee does, however, have an inherent and overriding obligation to take appropriate action when it has reason to suspect that a person with whom it is doing business is engaged in illegal activity. Failure of a casino licensee to respond appropriately under such circumstances may bring into question the integrity of the casino licensee and, consequently, its continuing qualification for licensure (see, for example, *In the Matter of the Applications of GNOC, Corp. For Renewal Of a Casino License And of Atlantia Design And Furnishings, Inc. For Renewal of a Casino Service Industry License*, Commission Petition Reference Number 143605). The Commission does not believe it is appropriate, however, to attempt to embody this overriding obligation in the text of every individual rule that it adopts pursuant to its regulatory authority. The primary purpose of the instant proposed rules is to develop rules which assure that wire transfers received by a casino licensee result in the valid and enforceable receipt of funds by the casino licensee. The Division's proposal would place an extraordinary burden on the casino licensee even when it has no reason to doubt the legitimacy of the patron's actions.

In this regard, the Commission must disagree with the Division's assertion that N.J.A.C. 19:45-1.27(a)6ii is intended to prevent the misuse of corporate funds for personal gaming activity. The goal of this provision, similar to the instant proposed rules, is to prevent fraud against a casino by assuring to the greatest extent possible that any counter check accepted by a casino licensee pursuant to N.J.S.A. 5:12-101 is enforceable and will be honored upon deposit.

As long as a wire transfer is completed in accordance with the requirements of the Federal Reserve wire system, the wire transfer will be enforceable by the casino licensee and no casino regulatory purpose will be served by requiring the casino licensee to contact routinely the sending financial institution to assure that the patron was authorized to send the funds. Absent the kind of overriding circumstances discussed above, any concerns in this area should be addressed by, and are the responsibility of, the sending financial institution and the authorities which regulate its conduct. Accordingly, the comment of the Division has been rejected.

COMMENT: The Division suggested that the notification from the casino's bank required by N.J.A.C. 19:45-1.24A(b) should be amended to include the name and location of the financial institution sending the wire transfer. Alternatively, the Division suggested that the casino licensee should be required to obtain this information from its bank upon verification of the wire transfer pursuant to N.J.A.C. 19:45-1.24A(d).

RESPONSE: A casino licensee does not need to know the name and location of the sending financial institution in order to assure that funds have been properly wired to its account. If the Division wishes to obtain this information during the course of an investigation, it may do so by simply requesting the information from the casino's bank. Moreover, as the Division noted in its comments, this information is generally included on the bank's advice of credit regardless of the Commission's requirements. The comment has been rejected.

COMMENT: The Division recommended that N.J.A.C. 19:45-1.24B not be adopted on the basis that wire transfers of funds out of a casino are neither necessary nor appropriate. To the extent that wire transfers are justified as providing security for patrons who would otherwise have to carry large sums of cash, the Division asserts that casino checks are adequate to meet this need. The Division further asserts that prohibiting transfers out will help discourage the unauthorized use of corporate funds for personal use since the quick return of illegally "borrowed" funds could not be assured. Again, the Division endorses the proposition that casinos should not be used as an unknowing pawn in financial maneuvering not associated with legalized gaming.

RESPONSE: First, casino checks may not be an adequate substitute for wire transfers in all cases. Wire transfers are usually used when very substantial sums of money are involved. The interest income which may be lost during the check clearing and deposit process can be substantial, especially when foreign banks are involved. Casino patrons have a legitimate interest in having funds returned to their individual accounts as quickly as possible.

Second, as noted above, the Commission's rules are designed to assure the validity of transactions in which the casino is involved. The sending financial institution, and the laws which govern its conduct, should be concerned with the authority of the individual to send the funds in the first instance. Once the funds are legally in the possession of the casino, the Commission does not agree that any significant incremental deterrent effect will be achieved by precluding a casino licensee from making a lawful transfer of the funds.

COMMENT: The Division recommended that wire transfers to or from a casino involving an overseas financial institution should only be permitted where the patron is a foreign national.

RESPONSE: As long as wire transfers to foreign institutions are otherwise lawful, the Commission is not aware of any reason why such transactions should be limited to foreign nationals. Any concerns raised by such transactions which are unrelated to the conduct of the casino licensee should be addressed by the appropriate authorities. The comment has been rejected.

The Commission has made a clarifying change upon adoption to N.J.A.C. 19:45-1.24B(b), more accurately delineating the general cashier's responsibilities pertaining to the Wire Transfer Request Form.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

19:45-1.1 Definitions

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

...
 "Cage supervisor" means any person holding a license and position endorsement as required by the casino licensee's approved jobs compendium which allows that person to supervise personnel and functions within the cashiers' cage.

"Wire transfer" means a transfer of funds by means of the Federal Reserve Bank wire system in accordance with the requirements of 12 CFR 210.25 et seq. and the Commission's rules.

19:45-1.15 Accounting controls within the cashiers' cage

(a) (No change.)

(b) The cashiers' cage shall be physically segregated by personnel and function as follows:

1. General cashiers shall operate with individual imprest inventories of cash and such cashiers' functions shall be, but not limited to, the following:

i.-viii. (No change.)

ix. Receive checks from check cashiers to be returned to patrons for check redemptions, partial redemptions, consolidations or substitutions;

x. Receive Wire Transfer Acknowledgment Forms in accordance with N.J.A.C. 19:45-1.24A for the purpose of completing Customer Deposit Forms; and

xi. Receive from check, chip bank and reserve cash cashiers documentation with signatures thereon, required to be prepared for the effective segregation of functions in the cashiers' cage.

2. Check cashiers shall not have access to cash, gaming chips and plaques and such cashiers' functions shall be, but not limited to, the following:

i.-iv. (No change.)

v. Prepare bank deposit slips or supporting documentation for checks to be deposited;

vi. Receive Wire Transfer Acknowledgment Forms in accordance with N.J.A.C. 19:45-1.24A for the purpose of redeeming Counter Checks or accepting payment on returned Counter Checks; and

vii. Receive from general, chip bank, and reserve cash cashiers documentation with signatures thereon, required for the effective segregation of functions in the cashiers' cage.

3.-4. (No change.)

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

19:45-1.24 Procedure for acceptance, accounting for and redemption of patrons cash deposits

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

(h) On the original and duplicate of the Customer Deposit Form, or in stored data, the general cashier shall record, at a minimum, the following information:

1.-4. (No change.)

5. Nature of the amount received (cash, cash equivalents, chips, plaques, or wire transfer).

(i)-(l) (No change.)

(m) A patron may obtain a refund of his or her deposit or any unused portion of a deposit by requesting the refund from a general cashier and returning his or her copy of the Customer Deposit Form. The general cashier shall verify the customer's identification and shall:

1.-2. (No change.)

3. Prepare necessary documentation evidencing such refund containing the following information:

i.-ii. (No change.)

iii. Type of refund made (cash, check or wire transfer);

iv.-v. (No change.)

(n)-(q) (No change.)

19:45-1.24A Procedures for accepting, verifying and accounting for wire transfers

(a) A casino licensee may, in accordance with the rules of the Commission, accept a wire transfer of funds to enable the following:

1. Establishment of a cash deposit pursuant to N.J.S.A. 5:12-101b and N.J.A.C. 19:45-1.24;

2. Redemption of an outstanding Counter Check pursuant to N.J.S.A. 5:12-101c and N.J.A.C. 19:45-1.26 and 1.27; or

3. Payment of a returned Counter Check pursuant to N.J.S.A. 5:12-101e and N.J.A.C. 19:45-1.29.

(b) Any wire transfer of funds authorized by this section shall be transferred to and deposited in the casino licensee's approved operating account in a New Jersey bank. The casino licensee shall require

its bank to notify the casino licensee of the receipt and deposit of the wire transfer by transmitting the information required in (c)2 through 6 below by one or more of the following methods:

1. Direct telephone notification between the casino licensee's bank and a cage employee, which notification shall be recorded in the Wire Transfer Log in accordance with (c)6 below;

2. Direct hard copy (printed) communication sent by the casino licensee's bank to the casino licensee, which document shall be dated, time-stamped and signed by the cage employee receiving the notification, and forwarded to the accounting department as supporting documentation in accordance with (g) below; or

3. Direct computer access by the casino licensee to the wire transfer transaction as it is credited to its operating account at its bank, which transaction shall be printed from the computer screen and dated, time-stamped and signed by the cage employee receiving the notification, and forwarded to the accounting department as supporting documentation in accordance with (g) below.

(c) Upon notification in accordance with (b) above that a wire transfer of funds has been credited to the casino licensee's operating account, the cage employee who received the notice shall record, at a minimum, the following information in the notification section of a Wire Transfer Log maintained in the main bank of the cashiers' cage:

1. A sequential wire transfer number which shall be generated by the casino licensee;

2. The date and time of the notification;

3. The name of the casino licensee's bank to which the funds were transferred;

4. The amount of funds transferred, stated in numbers and words;

5. The name of the patron for whose benefit the funds were transferred;

6. The method authorized under (b) above by which the casino licensee was notified of the receipt of the wire transfer and, if by telephone, the name and title of the person at the casino licensee's bank who made the telephone call; and

7. The signature of the cage employee receiving and recording the information required by this subsection.

(d) Upon completion of the notification section of the Wire Transfer Log required by (c) above, a cage supervisor other than the cage employee who received and recorded notification of the wire transfer shall verify receipt of the wire transfer by telephone contact with a previously identified authorized employee of the casino licensee's bank. The cage supervisor verifying the wire transfer shall confirm the information recorded in the Wire Transfer Log pursuant to (c)2 through 6 above, and shall record the following in the verification section of the Wire Transfer Log:

1. The name and title of the authorized employee at the casino licensee's bank who confirmed the information;

2. The date and time of verification; and

3. The signature of the cage supervisor verifying receipt of the wire transfer and the information recorded pursuant to (c) above.

(e) Upon verification of the wire transfer and completion of the Wire Transfer Log, the general cashier of the casino licensee shall be deemed, for purposes of compliance with the Commission's rules, to have received cash at the general cashiers' cage in the amount of the wire transfer.

(f) Upon determining the purpose for the wire transfer, a cage supervisor shall prepare a Wire Transfer Acknowledgment Form, a two-part form containing, at a minimum, the following information:

1. The wire transfer number;

2. The date of the wire transfer;

3. The amount of the wire transfer, stated in numbers and words;

4. The name of the patron;

5. The purpose for the wire transfer (cash deposit; redemption; payment of returned Counter Check);

6. The signature of the preparer; and

7. The signature of either:

i. The check bank cashier, if the funds are to be used for Counter Check redemption or the payment of a returned Counter Check; or

ii. The general cashier, if the funds are to be used for a cash deposit.

(g) Upon completion of the information required by (f)l through 6 above, the cage supervisor who prepared the form shall obtain the signature required by (f)7 above on both copies of the Wire Transfer Acknowledgment Form, transmit the duplicate copy and any supporting documentation to the accounting department, and forward the original Wire Transfer Acknowledgment Form to:

1. The check bank cashier, if the funds are to be used for Counter Check redemption or the payment of a returned Counter Check, who shall:

- i. Post the amount of the funds to the patron's credit account;
- ii. If appropriate, return the redeemed Counter Check to the patron;
- iii. Forward to the accounting department the original Wire Transfer Acknowledgment Form for comparison to the duplicate; and
- iv. Forward to the accounting department the redemption copy of any Counter Check redeemed, in accordance with the requirements of N.J.A.C. 19:45-1.25; or

2. The general cashier, if the funds are to be used to establish a cash deposit, who shall:

- i. Prepare a customer deposit file in accordance with the provisions of N.J.A.C. 19:45-1.24;
- ii. Prepare a Customer Deposit Form in accordance with the provisions of N.J.A.C. 19:45-1.24, except that prior to the release to the patron of any funds credited to a cash deposit file by means of a wire transfer, the patron shall be required to present identification credentials to the general cashier who shall examine the patron's identification credentials to insure that the patron is the patron recorded on the Wire Transfer Acknowledgment Form, and shall maintain documentation supporting that examination; and
- iii. Forward to the accounting department the original Wire Transfer Acknowledgment Form for comparison to the duplicate.

(h) At the end of the month, a copy of the Wire Transfer Log shall be forwarded to the accounting department and reconciled with all Wire Transfer Acknowledgment Forms prepared during that month.

19:45-1.24B Procedure for sending funds by wire transfer

(a) Whenever a patron requests a casino licensee to send funds by wire transfer to a financial institution on behalf of the patron, the patron shall present to the general cashier the cash, cash equivalents, casino check, chips, plaques, or tokens representing the amount sought to be transferred, or, in the case of a cash deposit, request that the unused balance of the cash deposit be transferred. In the case of a cash deposit, the procedures set forth in N.J.A.C. 19:45-1.24 for redemption of a cash deposit shall be observed.

(b) The general cashier shall obtain from the reserve cash cashier a Wire Transfer Request Form, a four-part serially prenumbered form, ***which shall include, at a minimum, the following information. The general cashier* *[and]* shall record thereon, at a minimum, the *[following]* information ***required by (b)l through 7 below***:**

1. The name of the patron;
2. The date of the transaction;
3. The amount of funds to be wire transferred, stated in numbers and in words;
4. The source of funds to be transferred (cash, cash equivalent, casino check, chips, plaques, tokens or cash deposit);
5. The name and address of the financial institution to which the funds will be transferred and the account number to which the funds will be credited;
6. The signature of the patron;
7. The signature of the general cashier; and
8. The signature of the reserve cash cashier.

(c) Prior to obtaining the patron's signature on the Wire Transfer Request Form, the general cashier shall examine the patron's identification credentials and shall maintain documentation supporting that examination.

(d) After securing the patron's signature, the general cashier shall present the Wire Transfer Request Form to the reserve cash cashier, who shall sign the form and retain the original and duplicate copy. The general cashier shall retain the triplicate copy of the form and

shall give the patron the quadruplicate copy of the form as evidence of the wire transfer request.

(e) The reserve cash cashier shall immediately forward the original Wire Transfer Request Form to the accounting department as authorization to effect the transfer, and shall retain the duplicate copy for agreement with the triplicate copy held by the general cashier. At the end of the gaming day, and upon agreement of the duplicate and triplicate copies of the Wire Transfer Request Form, the reserve cash cashier shall forward both copies of the form to the accounting department.

(f) Upon receipt of the original Wire Transfer Request Form, the accounting department shall contact the casino licensee's bank in New Jersey to authorize the wire transfer of the funds and shall either:

1. Record on the original Wire Transfer Request Form:
 - i. The name and title of the person contacted at the casino licensee's bank;
 - ii. The date and time that the wire transfer was authorized; and
 - iii. The signature of the accounting department employee authorizing the wire transfer; or
2. If the wire transfer is authorized by means of a direct computer link between the casino licensee and its bank, print a copy of the wire transfer authorization from the computer screen which shall:
 - i. Comply with the requirements of (f)lii and iii above; and
 - ii. Be attached to the original Wire Transfer Request Form.

(g) At the end of the gaming day, the accounting department shall compare the duplicate and triplicate copies of the Wire Transfer Request Form to the original.

(a)

CASINO CONTROL COMMISSION

Rules of the Games Blackjack Irregularities

Adopted Amendment: N.J.A.C. 19:47-2.15

Proposed: December 5, 1988 at 20 N.J.R. 3014(a).

Adopted: April 6, 1989 by the Casino Control Commission,
Walter N. Read, Chairman.

Filed: April 6, 1989, as R.1989 d.231, **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. 5:12-63(c), 5:12-99(a) and 5:12-100(e).

Effective Date: May 1, 1989.

Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement supports the proposed amendment to N.J.A.C. 19:47-2.15 with a minor change. Specifically, the Division recommends that the amendment clarify that the patron has the option of receiving additional cards or calling his hand dead only after receiving his first two cards.

RESPONSE: Accepted.

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks ***thus***).

19:47-2.15 Irregularities

(a)-(h) (No change.)

(i) If ***after receiving the first two cards and*** the dealer fails to deal an additional card(s) to a player who has requested such a card, then, at the player's option, the dealer shall either deal the additional card(s) after all other players have received their additional cards but prior to the dealer revealing his or her hole card, or call the player's hand dead and return the player's original wager.

(a)

CASINO CONTROL COMMISSION**Rules of the Games****Big Six Wheel; Minimum and Maximum Wagers****Adopted Amendment: N.J.A.C. 19:47-5.6**

Proposed: January 17, 1989 at 21 N.J.R. 131(a).

Adopted: April 6, 1989 by the Casino Control Commission,
Walter N. Read, Chairman.Filed: April 6, 1989 as R.1989 d.232, **without change.**

Authority: N.J.S.A. 5:12-63(c), 5:12-70(f) and 5:12-100(e).

Effective Date: May 1, 1989.

Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement supports the proposed amendment to N.J.A.C. 19:47-5.6.

RESPONSE: Accepted.

Full text of the adoption follows:

19:47-5.6 Big Six Wheel; wagers and rotation of the wheel

(a) Each casino licensee shall submit to the Commission for review and approval the minimum wagers permitted at each Big Six Wheel in the casino. The minimum wagers as approved by the Commission and the maximums as established by the casino licensee shall be and remain conspicuously posted on a sign at each Big Six Table.

(b) Prior to the spin of the wheel, the dealer shall call "No More Bets".

(c) The Big Six Wheel shall be spun by the dealer in either direction and shall complete at least three revolutions to constitute a valid spin.

(d) If the clapper comes to rest between two numbers upon completion of the spin of the Big Six Wheel, the casino licensee has the option to do one of the following:

1. Declare the winning number to be that number previously passed; or

2. Declare the spin void and re-spin the wheel.

(e) Upon a casino licensee choosing one of the options as outlined in (d) above, it shall conspicuously post a sign at each table stating which option is in effect.

(f) Upon completion of the spin, the dealer shall first collect all losing wagers and then pay off all winning wagers.

(b)

CASINO CONTROL COMMISSION**Notice of Administrative Correction****Alcoholic Beverage Control****Conditions of Operation in Type IV Locations****N.J.A.C. 19:50-3.4**

Take notice that the Casino Control Commission has discovered an error in the text of N.J.A.C. 19:50-3.4, Conditions of operation in Type IV locations, currently in the New Jersey Administrative Code. The correct text as set forth below was filed with the Office of Administrative Law, but was erroneously published in the notice of proposal appearing in the April 4, 1988 New Jersey Register at 20 N.J.R. 770(a). As the section was not changed upon adoption (see 20 N.J.R. 1210(a)), the error was continued into the Code. This notice of administrative correction is made pursuant to N.J.A.C. 1:30-2.7(a)3, as the change is implied from the rule text itself.

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

19:50-3.4 Conditions of operation in Type IV locations

(a) (No change.)

(b) No CHAB licensee shall sell any alcoholic beverage in a Type IV location except by the glass or other [than] **open** receptacle for on-premises consumption within the authorized location.

EMERGENCY ADOPTIONS

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES BOAT REGULATION COMMISSION

Boating Regulations

Adopted Emergency New Rules and Concurrent Proposal: N.J.A.C. 7:6

Emergency New Rules Adopted: April 6, 1989 by Kenneth L. Husted, Chairman, New Jersey Boat Regulation Commission; and April 7, 1989 by Peter N. Perretti, Jr., Attorney General, Department of Law and Public Safety.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): April 11, 1989.

Emergency New Rules Filed: April 12, 1989 as R.1989 d.244.

Authority: N.J.S.A. 12:7-34.36 et seq., particularly 12:7-34.40 and 12:7-34.49, and 12:7A-29.

Emergency New Rules Effective Date: April 12, 1989.

Emergency New Rules Expiration Date: June 11, 1989.

Concurrent Proposal Number: PRN 1989-233.

Submit written comments by May 31, 1989 to:

Captain James W. Momm
N.J. State Police
Marine Law Enforcement Bureau
P.O. Box 7068
Trenton, New Jersey 08628-0068

These new rules were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of the emergency rules are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted rules become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.5(d)).

The agency emergency adoption and concurrent proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order 66(1978), N.J.A.C. 7:6 expired on December 19, 1988. The New Jersey Boat Regulation Commission ("Commission") and the Department of Law and Public Safety ("Department") have reviewed these expired boating rules and determined that they are necessary, reasonable and proper for the purpose for which they were originally promulgated. The Commission and Department have, therefore, adopted these emergency new rules in order to maintain the effectiveness of the boating regulations, minimize the disruption to the boating regulatory program, and ensure the continued safety for all persons and vessels in New Jersey territorial waters.

N.J.A.C. 7:6 implemented the New Jersey Boat Act of 1962, N.J.S.A. 2:7-34.36 et seq. The rules governed the registration and operation of approximately 200,000 vessels on New Jersey tidal and nontidal waters, and the issuance of boat operators' licenses on nontidal waters. The rules were enforced by the Marine Bureau of the Division of State Police.

A summary of each subchapter follows:

7:6-1 Boating Regulations

These are rules of general application concerning the operation of vessels and include such matters as certification and numbering, personal flotation devices, muffling devices, speed restrictions, anchoring rules, and accident reports.

7:6-2 Water Vessels Used in Business

These rules pertain to tax exemption certificates for commercial vessels.

7:6-3 Waterskiing

These rules concern the areas and hours of permissible waterskiing in selected lakes and tidal water bodies.

7:6-4 Nontidal Waters

These rules govern the operation of vessels on nontidal waters, including Lake Hopatcong. They include rules on minimum age, non-licensed operators, operation while intoxicated, and racing events.

7:6-5 Hull Identification Numbers

These rules govern the format and location of hull identification numbers.

7:6-6 Watercraft Noise Control

These rules establish certain noise limitations for motor vessels, including racing vessels.

7:6-7 (Reserved)

7:6-8 Motor Vehicles on Ice-Covered Waters

These rules prohibit the operation of all motor vehicles except snowmobiles on ice covered waters of the State.

Social Impact

These new rules will have a positive effect on the people of the State by continuing the State's regulation of boating activities and the Marine Police's ability to enforce these rules on New Jersey territorial waters. These new rules will continue the important safety program established by the expired rules.

Economic Impact

These new rules will affect approximately 200,000 water vessels in the State. These vessels are required, pursuant to N.J.S.A. 12:34.47, to pay fees for the initial numbering of all vessels, for the issuance of special numbers, and for the issuance and renewal of tax exempt certificates. The fee schedule is authorized by N.J.S.A. 12:7-34.47 and is established by N.J.A.C. 7:6 as well as by N.J.S.A. 12:7-34.47. These new rules will continue a regulatory program detailing what statutory fees are to be paid and how they are to be paid. The Department does not anticipate any other economic impacts as a result of these new rules.

Regulatory Flexibility Analysis

These rules will apply to water vessels in New Jersey. It is estimated that of the total number of approximately 200,000 water vessels impacted by these rules, 5000 are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to comply with these rules, the small businesses will have to comply with the requirements set forth in the summary, above, including the numbering, registration and tax exemption certificate requirements. It is unlikely that small businesses will need professional services such as accountants and consultants to comply with these rules. Additionally, it is expected that capital costs for each small business will be minimal. In developing these rules, the Commission and Department have balanced the need to protect the public safety against the economic impact of these rules and have determined that to minimize the impact of the rules would endanger the public safety and therefore, no exemption from coverage is provided.

Full text of the emergency adoption and concurrent proposal may be found in the New Jersey Administrative Code at N.J.A.C. 7:6.

(b)

DIVISION OF MOTOR VEHICLES BOAT REGULATION COMMISSION

Boating Regulations

Lanyard Cut-off Switch; Operation on Greenwood Lake; Personal Watercraft

Adopted Emergency New Rules and Concurrent Proposal: N.J.A.C. 7:6-1.44, 4.7 and 9

Emergency New Rules Adopted: April 6, 1989 by Kenneth L.

Husted, Chairman, New Jersey Boat Regulation Commission; and April 7, 1989 by Peter N. Perretti, Jr., Attorney General, Department of Law and Public Safety.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): April 11, 1989.

Emergency New Rules Filed: April 12, 1989 as R.1989 d.245.

Authority: N.J.S.A. 12:7-34.36 et seq., particularly 12:7-34.40 and 12:7-34.49, and 12:7A-29.

Emergency New Rules Effective Date: April 12, 1989.

Emergency New Rules Expiration Date: June 11, 1989.

Concurrent Proposal Number: PRN 1989-234.

Submit written comments by May 31, 1989 to:

Captain James W. Momm
N.J. State Police
Marine Law Enforcement Bureau
P.O. Box 7068
Trenton, New Jersey 08628-0068

These new rules were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of the emergency rules are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted rules become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.5(d)).

The agency emergency adoption and concurrent proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order 66(1978), N.J.A.C. 7:6 expired on December 19, 1988 ("expired rules"). The New Jersey Boat Regulation Commission ("Commission") and the Department of Law and Public Safety ("Department") reviewed those expired rules and determined that they were necessary, reasonable and proper for the purpose for which they were originally promulgated and, therefore, adopted those expired rules by emergency proceedings, as published elsewhere in this issue of the New Jersey Register.

Concurrently, the Commission and Department determined that there are three other threats to safe boating in New Jersey that were not regulated under the expired rules. These three threats are: (1) the absence of any special requirements regarding the safe operation of personal watercraft on New Jersey waters; (2) the non-required use of a lanyard cut-off switch in a vessel equipped with one; and (3) the inconsistencies between New York and New Jersey laws regarding boating on Greenwood Lake, Passaic County. The Commission and Department have, therefore, adopted these emergency new rules for the immediate protection of the boating public from these three identified threats to safe New Jersey boating.

A summary of these emergency new rules follows:

N.J.A.C. 7:6-1.44, addressing the requirement of wearing a lanyard cut-off switch in vessels equipped with such a switch, was added to promote the safe operation of all vessels on tidal and nontidal waters of the State.

N.J.A.C. 7:6-4.7, addressing operating requirements on Greenwood Lake, Passaic County, was added to be more consistent with New York State laws regarding boating on Greenwood Lake. This rule furthers consistency among interstate marine enforcement authorities.

N.J.A.C. 7:9, a new subchapter pertaining to personal watercraft, was added due to the Commission's and the Department's concern regarding the increased use of personal watercraft and the need for additional requirements to ensure the safe operation of these vessels. This subchapter defines personal watercraft, imposes various operation restrictions and prohibits the operation of personal watercraft in the Point Pleasant and Cape May Canals.

Social Impact

These new rules will have a positive effect on the people of the State by establishing requirements regarding the lanyard cut-off switch, boating operations on Greenwood Lake, Passaic County, and personal watercraft. These requirements will enhance the safety program that was established by the expired rules.

Economic Impact

The Commission and Department do not anticipate any economic impacts as a result of these new rules.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required because these new rules do not impose any reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules affect the boating public.

Full text of the adopted emergency new rules and concurrent proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

7:6-1.44 Lanyard cut-off switch

The operator of a vessel equipped with a lanyard cut-off switch shall wear the safety switch lanyard at all times when the vessel is in operation.

7:6-4.7 Operation on Greenwood Lake

(a) A person shall not operate a vessel on Greenwood Lake, Passaic County, in such a way as to unreasonably interfere with or endanger any other vessel or person. Every vessel operated on Greenwood Lake shall be operated in a careful and prudent manner.

(b) A vessel shall not be operated upon Greenwood Lake at a speed exceeding 45 miles per hour.

(c) A vessel shall not be operated upon Greenwood Lake at a speed exceeding 15 miles per hour between one-half hour after sunset and one-half hour before sunrise.

(d) A vessel shall not be operated upon Greenwood Lake within 200 feet of shore, a dock, pier, raft or float, or an anchored or moored vessel at a speed exceeding five miles per hour.

(e) The provisions of this section shall not apply to any vessel or to any person operating a vessel while actually competing in an authorized race or regatta.

7:6-[4.7]4.8 (No change in text.)

SUBCHAPTER 9. PERSONAL WATERCRAFT

7:6-9.1 Scope

The following rules shall govern the operation of personal watercraft operating on the waters of New Jersey. These rules are in addition to all other applicable laws, rules and regulations governing personal watercraft.

7:6-9.2 Definitions

"Personal watercraft" means a power vessel which:

1. Is designed to be operated by a person or persons, sitting, standing or kneeling;
2. Uses an internal combustion engine to power a water jet pump which propels the vessel through the water; and
3. Uses an internal combustion engine that does not have the ability to reverse the pump's thrust so as to allow the vessel to be operated in reverse or have the ability to disengage the pump so as to prevent the vessel from making headway.

7:6-9.3 Operation limitations

(a) A person shall not operate a personal watercraft during the hours between sunset and sunrise or during times of restricted visibility.

(b) A person shall not operate a personal watercraft in the confine of the Point Pleasant Canal.

(c) A person shall not operate a personal watercraft within the Cape May Canal.

(d) A person shall not operate a personal watercraft above idle speed within 50 feet of another vessel.

(e) A person shall not operate a personal watercraft in such a manner so as to become airborne or completely leave the water while crossing the wake of another vessel.

(f) A person shall not operate a personal watercraft within 50 feet of a bathing beach that has its boundaries marked by buoys or signs

(g) A person shall not operate a personal watercraft above idle speed within 50 feet of the shoreline or 50 feet from a person in the water

(h) A person shall not tow a waterskier or any device with a personal watercraft.

(i) Any person operating a personal watercraft and any passenger on a personal watercraft shall at all times, when the personal watercraft is in operation, wear a United States Coast Guard Approved Type I, II, III, or V Hybrid Personal Flotation Device.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Amendment to the Ocean County Water Quality Management Plan

Public Notice

Take notice that the Ocean County Planning Board has submitted a Wastewater Management Plan (WMP) for the Ocean County Utilities Authority's (OCUA) Central Service Area. The WMP provides for the abandonment of the Ortle Beach Wastewater Treatment Plant with flows diverted to the OCUA Central Wastewater Treatment Plant (WTP); increasing the planned flows to the Central Plant to 43.284 million gallons per day (MGD) (47.284 Seasonal Total); rerating of the Central WTP from 24 MGD to 28 MGD; and the utilization of an on-site wastewater treatment facility with subsurface disposal at the site of the Jackson Township Middle School. Additionally, the WMP delineates sewer service areas for the following municipalities: Dover Township, Island Heights Borough, the Island Beach communities (Mantoloking Borough, Brick Township—Island portion, Lavallette Borough, Seaside Heights Borough and Seaside Park Borough), Berkeley Township, Beachwood Borough, South Toms River Borough, Pine Beach Borough, Ocean Gate Borough, Lacey Township and Ocean Township.

This notice is being given to inform the public that a plan amendment has been proposed for the Ocean County Water Quality Management (WQM) Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Ocean County Planning Board, Court House Square, CN 2191, Toms River, New Jersey 08754; and the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 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 George Horzepa, 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 person 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. Horzepa 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.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Atlantic County Water Quality Management Plan

Public Notice

Take notice that the Atlantic County Utilities Authority has petitioned Atlantic County to amend the Atlantic County Water Quality Management (WQM) Plan to increase the wastewater flow for the previously approved Lower Great Egg Harbor River Region Coastal Alternative Interceptor to 5.29 million gallons per day. This flow increase is a result of increased population projections.

This notice is being given to inform the public that a plan amendment has been proposed for the Atlantic County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Department of Regional Planning and Development, County Office Building, 1333 Atlantic Avenue, Atlantic City, New Jersey 08401, and the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, CN-029, 401 East State Street, 3rd Floor, Trenton, New Jersey

08625. These documents are 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 Richard Dovey, the Director of Planning at the County Office Building address cited above; and George Horzepa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days following the public notice publication date. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered. The Atlantic County Planning Advisory Board shall issue a recommendation on the WQM Plan Amendment to the County Executive and the Chairman of the Board of Chosen Freeholders within 45 days from the date of the notice. Adoption of the amendment shall be by ordinance by the Atlantic County Board of Chosen Freeholders. The NJDEP thereafter may approve and adopt this amendment without further notice.

(c)

DIVISION OF FISH, GAME AND WILDLIFE

Bureau of Shellfisheries

Notice of Action on Petition for Rulemaking on Mechanical Clam Dredging

Petitioner: Biosphere, Inc.

Take notice that on September 15, 1988, the Department of Environmental Protection (Department) received a petition for rulemaking concerning mechanical clam harvest from Biosphere, Inc. Petitioner, grantee of over 80 acres of riparian lands in Little Egg Harbor, Tuckerton, New Jersey, requested that the Department promulgate a rule to allow mechanical clam dredging on certain Atlantic Coast lots.

In accordance with N.J.A.C. 1:20-3.6, the Department gave notice in the November 21, 1988 New Jersey Register that it was referring the petition for further deliberation in order to allow for adequate evaluation of the merits of the petition by both the Commissioner of the Department of Environmental Protection and the Atlantic Coast Section of the New Jersey Shell Fisheries Council (Council) (see 20 N.J.R. 2935(c)). The Department hereby gives notice, as required by N.J.A.C. 1:20-3.6, that as a result of further deliberation on the petition, the Department has decided to deny the petitioner's request for rulemaking on mechanical clam harvest.

In formulating rules concerning the State's shellfisheries resource, the Department is governed by the legislative mandate to "make such rules and regulations as may be necessary for the preservation and improvement of the shellfish industry and resource of the State," N.J.S.A. 50:1-5. Based on public comment at several Council meetings, technical and biological information supplied by the petitioner, the advice of the Division of Fish, Game and Wildlife, and after consultation with and the advice of the Council, the Commissioner has determined that authorizing mechanical clam dredging is likely to be detrimental to both the shellfish resource and the clamming industry. The Department does not believe that proposing rules to authorize clam dredging is justified at this time, given the uncertainty about the environmental impact of clam dredging, the enforcement problems that allowing clam dredging is expected to produce, and the detrimental economic impact that dredging would have on the livelihood of the traditional hand harvesters now comprising the clamming industry. Therefore, the petitioner's request for rulemaking is denied.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

(a)**DIVISION OF WATER RESOURCES****Amendment to the Cape May County Water Quality Management Plan****Public Notice**

Take notice that Cape May County has submitted for approval an amendment to the Cape May County Water Quality Management (WQM) Plan to expand the sewer service area of the Lower Township Municipal Utilities Authority to include the site of the Lower Township Elementary School, Block 753.01, Lot 4.01.

This notice is being given to inform the public that a plan amendment has been proposed for the Cape May County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Cape May County Planning Board, Cape May Court House, New Jersey 08210, and the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, Third Floor, CN-029, Trenton, New Jersey 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 George Horzempa, 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 person 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. Horzempa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(b)**DIVISION OF WATER RESOURCES****Amendment to the Northeast and Upper Raritan Water Quality Management Plans****Public Notice**

Take notice that on October 6, 1988, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Northeast and Upper Raritan Water Quality Management Plans was adopted by the Department. This amendment is to allow a Wastewater Management Plan (WMP) for the Borough of Bernardsville. Among the actions authorized by this document will be the expansion of the existing Borough of Bernardsville Sewage Treatment Plant to a capacity of 0.8 million gallons per day. The document will also establish sewer service areas for wastewater treatment facilities in the Borough of Bernardsville.

LAW AND PUBLIC SAFETY**(c)****DIVISION OF CONSUMER AFFAIRS****Home Improvement Practices Rules****Notice of Action Regarding Petition for a Rule****Amending or Invalidating N.J.A.C. 13:45A-16 as Related To Master Plumbers**

Petitioners: New Jersey State League of Master Plumbers, Inc.

A Notice of Petition for a rule to amend or invalidate the Home Improvement Practices rules, as related to master plumbers licensed under N.J.S.A. 45:14C-1 et seq., was published in the March 20, 1989 New Jersey Register at 21 N.J.R. 798(b). Petitioners specifically requested a determination that the Home Improvement Practices rules are invalid as they apply to all plumbing contractors who are licensed by the New Jersey Board of Master Plumbers; or, in the alternative, that the rules be amended to provide exemption for these entities. Petitioners argued that neither the intent of the Home Improvement Practices rules nor any

evidence of misdeeds by plumbing contractors as a class justifies inclusion of these persons, who are already regulated by a statutorily-created licensing board.

The Division of Consumer Affairs believes that the existence of the Board of Master Plumbers does not preclude regulation of those plumbing contractors who engage in the remodeling, altering, repairing, or modernizing of residential or noncommercial property. There is nothing in the State Plumbing License Law of 1968, N.J.S.A. 45:14C-1 et seq., which would indicate incompatibility with the Consumer Fraud Act. While the master plumbers' statute was meant to insure competence in this specialized field, occupational competence is plainly not the only public policy involved. The consumer desires assurance not only that the work is done properly but that he or she is not otherwise being defrauded. Supplemental regulation, designed to protect the consumer with respect to aspects of a project not directly involving occupational competence, furthers the policy of the licensing act.

However, the Division has established a committee to undertake immediate review of the existing Home Improvement Practices rules in order to recommend to the Director amendments that may be required to update the provisions of the rules and meet the concerns voiced by petitioners. The Division also convened an informal conference on March 10, 1989, attended by representatives of petitioners and other interested parties. Presentations and comments made at that conference have been taken under advisement; the Division is deliberating further action on this matter.

HEALTH**(d)****DIVISION OF EPIDEMIOLOGY****Notice of Grant Availability
Chronic Renal**

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq., the Department of Health hereby publishes notice of the availability of the following grant:

NAME OF GRANT PROGRAM: Chronic Renal, Grant Program No. 90-72-CR.

PURPOSE FOR WHICH THE GRANT PROGRAM FUNDS WILL BE USED: To implement activities/educational programs for prevention of chronic renal diseases. Types of grant programs and amount of funds released varies annually.

AMOUNT OF MONEY IN THE GRANT PROGRAM: The availability of funds for this program is contingent on appropriation of funds to the department. Contact the person identified below to determine whether the funds have been awarded and to receive further information.

GROUP OR ENTITIES WHICH MAY APPLY FOR THE GRANT PROGRAM: Depending on types of proposals released, eligible agencies may be hospitals, voluntary health service organizations, medical schools, continuing education organizations, etc.

QUALIFICATIONS NEEDED BY AN APPLICANT TO BE CONSIDERED FOR THE GRANT: Dependent on requests for application (RFA(s)) released; agencies funded may need specialized staff and/or experience to conduct grant activities.

PROCEDURES FOR ELIGIBLE ENTITIES TO APPLY FOR GRANT FUNDS: Complete and timely submission of RFA.

FOR INFORMATION CONTACT:

Mary Burgess, M.S., R.D.
Coordinator, Renal Program
Division of Epidemiology & Disease Control
CN 369
Trenton, New Jersey 08625-0369
(609) 588-7474

DEADLINE BY WHICH APPLICATIONS MUST BE SUBMITTED: Applications are submitted approximately four to six weeks after release of RFA; deadline for submission is included in RFA.

DATE BY WHICH APPLICANT SHALL BE NOTIFIED WHETHER THEY WILL RECEIVE FUNDS: Approximately eight weeks after deadline for submission of RFA(s).

HUMAN SERVICES**(a)****DEVELOPMENTAL DISABILITIES COUNCIL****Availability of Grants**

Take notice that in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services, Developmental Disabilities Council, hereby announces the availability of the following grant program.

A. Name of Program:

Developmental Center Study—Developmental Disabilities Service Awards.

B. Purpose:

The study will identify individuals residing in State developmental centers who have not been identified as ready for community placement. The purpose of the study will be to address the impact of the institutional environment on its residents, and provide a final product that will diversify the concept of what both the community and institutional residential service systems look like. The study will concentrate on those who are between the ages of 18 to 40 years of age, and who reside at Woodbine, Woodbridge, Johnstone, New Lisbon, Vineland, North Jersey, North Princeton, and Hunterdon Developmental Centers. Data will be pulled from existing data bases at the center, and from Individual Habilitation Plans. A smaller sample of individual interviews will follow for more detail.

C. Amount of Money:

\$125,000 from the Developmental Disabilities Service Awards under the "Developmental Disabilities Assistance and Bill of Rights Amendments of 1987"—P.L. 100-146.

D. Organizations Which May Apply for Funding Under This Program:

Applicants which may apply for funding under this program may be either profit or not for profit research organizations familiar with the State social service system within New Jersey.

E. Qualifications needed by an applicant to be considered for the program:

The organizations seeking to conduct this study must:

1. Demonstrate expertise in clinical assessment and familiarity with community and residential programming for persons with developmental disabilities in New Jersey; and
2. Initiate the study upon completion of the grant award process.

F. Procedure for eligible organizations to apply:

Request for Proposal (RFP) packages can be requested from:

Catherine Rowan, Executive Director
Developmental Disabilities Council
108-110 North Broad Street
Trenton, NJ 08625

G. Address for application to be submitted:

Completed proposals should be submitted to Catherine Rowan, Executive Director, Developmental Disabilities Council at the above address.

H. Deadline by which application proposals must be submitted:

Proposals must be submitted by May 31, 1989.

I. Date by which applicant shall be notified of approval or disapproval:

Applicants shall receive notice of approval or disapproval of an RFP within 30 days after the deadline for receipt of proposals.

(b)**DEVELOPMENTAL DISABILITIES COUNCIL****Availability of Grants**

Take notice that in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services, Developmental Disabilities Council, hereby announces the availability of the following grant program.

A. Name of Program:

Sibling Support Program for Persons with Developmental Disabilities—Developmental Disabilities Service Awards.

B. Purpose:

The Developmental Disabilities Council acknowledges that there is no coordinated service addressing sibling support for families of the developmentally disabled. Sibling support groups would offer support to the emotional, psychological and social needs of siblings of individuals

with special needs and improve family functioning. The funds are available for:

1. Coordinating existing national and local curricula and data regarding sibling support groups for families with developmentally disabled children;

2. Developing a guide/manual of operations for sibling groups in New Jersey to be utilized by social service agencies and advocacy groups; and

3. Conducting a two day Statewide seminar involving both agencies and advocacy groups and the families and siblings of the child with developmental disabilities.

C. Amount of money in the program:

\$75,000 from the Developmental Disabilities Service Awards from the Developmental Disabilities Assistance and Bill of Rights Amendment of 1987—P.L. 100-146.

D. Organizations which may apply for funding under this program:

Agencies which may apply for funding under this program must be public or private non-profit organizations and based in New Jersey.

E. Qualifications needed by an applicant to be considered for the program:

The agencies seeking to apply must:

1. Demonstrate expertise in the coordination of research information in social service fields and possess knowledge of the social service delivery system for the developmentally disabled in New Jersey; and

2. Initiate the project promptly upon receiving the grant award.

F. Procedure for eligible organizations to apply:

Request for proposal (RFP) packages can be requested from:

Catherine Rowan, Executive Director
Developmental Disabilities Council
108-110 North Broad Street
Trenton, NJ 08625

G. Address for application to be submitted:

Completed proposals should be submitted to Catherine Rowan, Executive Director, Developmental Disabilities Council at the above address.

H. Deadline by which application proposals must be submitted:

Proposals must be submitted by May 31, 1989.

I. Date by which applicants shall be notified of approval or disapproval:

Applicants shall receive notice of approval or disapproval of an RFP within 30 days after the deadline for receipt of proposals.

LAW AND PUBLIC SAFETY**(c)****OFFICE OF THE ATTORNEY GENERAL****Notice of the Availability of the Quarterly Report of Legislative Agents for the Fourth Quarter of 1988, ending December 31, 1988**

Take notice that Peter N. Perretti, Jr., Attorney General of the State of New Jersey, in compliance with N.J.S.A. 52:13C-23(h), hereby publishes Notice of the Availability of the Quarterly Report of Legislative Agents for the Fourth Quarter of 1988, accompanied by a Summary of the Quarterly Report.

At the conclusion of the Fourth Quarter of 1988, the Notices of Representation filed with this office reflect that 653 individuals are registered as legislative agents. Legislative agents are required by law to submit in writing a quarterly report of their activity in attempting to influence legislation during each calendar quarter. The aforesaid report shall be filed between the first and tenth days of each calendar quarter for such activity that occurred during the preceding calendar quarter. (N.J.S.A. 52:13C-22(b)).

A complete Quarterly Report of Legislative Agents, consisting of the summary and copies of all quarterly reports filed by legislative agents for the fourth calendar quarter of 1988 has been filed separately for reference with the following offices: the Office of the Governor, the Office of the Attorney General, the Office of Legislative Services (Bill Room), the Office of Administrative Law, and the State Library. Each is available for inspection in accordance with the practices of those offices.

The Summary Report includes the following information:

The names of registered agents, their registration numbers, their business addresses and whom they represent.

A list of agents who have filed quarterly reports for the fourth calendar quarter of 1988 noting either activity or no activity for this quarter.

A list of agents who did not file a quarterly report for the fourth calendar quarter of 1988.

Following is a listing of all new legislative agents who have filed Notices of Representation during the fourth calendar quarter of 1988:

No. 112 Travis E. Nichols, representing Physicians Reliance Association.

No. 256 Jane E. Kelly, representing New Jersey Utilities Association.

No. 498 Robert L. Lash and Cindy Simon, both representing Rutgers University Legislative Affairs Council.

The following is a listing of all legislative agents who have filed Notices of Termination during the fourth calendar quarter of 1988:

No. 214 David J. Anderson

No. 153 Sallie Anderson

No. 217 Frank L. Bate

No. 224 Robert Corso

No. 407 Thomas A. D'Ambola

No. 237 Alfred C. DeCotis

No. 432 Barry J. Donohue

No. 118 Vito Florenzo

No. 196 John F. Flynn

No. 150 Voncille H. Hueston

No. 256 Richard Johnston

No. 392 Richard Kinghan

No. 147 William L. Kirchner

No. 295 Phillip Kirschner

No. 404 Joseph M. Kraft

No. 428 Robert H. Mayer

No. 21 Toni C. Mullins

No. 258 Harry J. Muscatello

No. 79 Jeffrey W. Raser

No. 438 James P. Richmond

No. 244 Susan E. Russell

No. 119 Francis Rooney

No. 151 Frederick J. Schragger

No. 19 Paul E. Smith

No. 502 Emma F. Thomas

No. 300 Victor Tripp

No. 417 Edmond Zukowski

For further information, contact the Legislative Agents Unit at (609) 984-9371.

(a)

STATE LAW ENFORCEMENT PLANNING AGENCY

Notice of Availability of Grant Applicants Guide

Take notice that the State Law Enforcement Planning Agency has published its latest edition of the Applicants Guide. This publication, Dissemination Document No. 34, includes information for applicants for grants under the following programs: Juvenile Justice and Delinquency Prevention Act; Victim Assistance Program under the Victims of Crime Act; the Justice Assistance Act and the State Court Backlog Reduction Program.

A copy of the publication is available by writing to:

State Law Enforcement Planning Agency

CN 083

Trenton, NJ 08625

TREASURY-GENERAL

(b)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection

Notice of Assignments—Month of March 1989

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, pre-qualified New Jersey consulting firms. For information on DBC's pre-qualification and assignment procedures, call (609) 984-6979.

Last list dated March 1, 1989.

The following assignments have been made:

DBC#	PROJECT	A/E	CCE
P464	Testing/Inspection Services Garage & Office Building Forked River State Marina Lacey Township, NJ	Ambric Testing Assoc. of NJ	\$1,639 Services
S253	Renovations to Health Center Swimming Pool N.J. Police Headquarters W. Trenton, NJ	M. Benton & Assoc.	\$116,000
M629	Asbestos Removal Transitional Village Marlboro Psychiatric Hospital Marlboro, NJ	BCM Eastern, Inc.	\$7,500 Services
A576	Program Management Services Newark Office Facilities Newark, NJ	Rothe-Johnson Assoc.	\$376,000 Estimated Services

COMPETITIVE PROPOSALS

	Rothe-Johnson Assoc.	\$376,000 Estimated Services	
	The Cannon Partnership	\$997,400 Estimated Services	
P587	Sanitary Facilities Worthington State Forest Warren County, NJ	Kupper Associates	\$500,000

COMPETITIVE PROPOSALS

	Kupper Associates	57,610 Lump Sum	
	Van Note-Harvey Assoc.	71,000 Lump Sum	
	Berson, Ackermann & Assoc., Inc.	75,000 Lump Sum	
A510-12	Asbestos Abatement 11, 12, 13th Floors— Labor & Industry Building Trenton, NJ	Gaudet Associates	\$2,000,000

COMPETITIVE PROPOSALS

	Gaudet Associates	252,500 Lump Sum
	Kaselaan & D'Angelo	254,030 Lump Sum
	O'Brien & Gere	293,405 Lump Sum

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter**. If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	5/4/92
1:5	10/20/91
1:6	5/4/92
1:6A	5/4/92
1:7	5/4/92
1:10	5/4/92
1:10A	5/4/92
1:10B	10/6/91
1:11	5/4/92
1:13	5/4/92
1:13A	4/3/94
1:20	5/4/92
1:21	5/4/92
1:30	2/14/91
1:31	6/17/92

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	1/17/94
2:3	6/18/89
2:5	6/18/89
2:6	9/3/90
2:9	7/7/91
2:16	5/7/90
2:22	7/6/92
2:23	7/18/93
2:24	2/11/90
2:32	6/1/92
2:33	3/6/94
2:48	11/27/90
2:50	5/1/92
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	11/7/93
2:69	11/7/93
2:70	5/7/90
2:71	7/8/93
2:72	7/8/93
2:73	7/8/93
2:74	7/8/93
2:76	8/29/89
2:90	6/24/90

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91
3:7	9/16/90
3:11	5/1/94
3:13	11/17/91
3:17	6/18/91
3:18	1/19/93
3:19	3/17/91

N.J.A.C.	Expiration Date
3:21	2/2/92
3:22	5/21/89
3:23	7/6/92
3:24	8/20/89
3:25	8/17/92
3:26	12/31/90
3:27	9/16/90
3:28	12/17/89
3:30	10/17/88
3:32	10/1/93
3:38	10/5/92
3:41	10/16/90
3:42	4/4/93

PERSONNEL (CIVIL SERVICE)—TITLE 4/4A

N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/5/91
4:6	5/5/91
4A:1	10/5/92
4A:2	10/5/92
4A:3	9/6/93
4A:4	6/6/93
4A:5	10/5/92
4A:6	1/4/93
4A:7	10/5/92
4A:9	10/5/92
4A:10	11/2/92

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:2	4/10/94
5:3	9/1/93
5:4	10/5/92
5:10	11/17/93
5:11	3/10/94
5:12	1/1/90
5:13	12/24/92
5:14	12/1/90
5:15	1/3/94
5:17	6/1/89
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:19	2/1/93
5:22	12/1/90
5:23	3/1/93
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	6/18/91
5:30	6/29/93
5:31	12/1/89
5:37	11/18/90
5:38	10/27/93

N.J.A.C.	Expiration Date
5:70	7/9/92
5:71	3/1/90
5:80	5/20/90
5:91	6/16/91
5:92	6/16/91
5:100	5/7/89

N.J.A.C.	Expiration Date
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90
7:20A	12/16/93
7:22	1/5/92
7:23	6/18/89
7:24	5/19/91
7:25	2/18/91
7:25A	5/6/90
7:26	11/4/90
7:26B	12/21/92
7:27	Exempt
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:37	Exempt
7:38	9/18/90
7:45	2/6/94

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

N.J.A.C.	Expiration Date
5A:2	5/20/90

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:2	2/6/94
6:3	7/8/93
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	8/9/90
6:22	9/3/90
6:22A	12/19/93
6:24	4/2/91
6:26	1/24/90
6:27	1/24/90
6:28	6/1/89
6:29	3/25/90
6:30	7/5/93
6:31	1/24/90
6:39	10/18/89
6:43	4/7/91
6:46	10/5/92
6:53	7/7/92
6:64	1/11/93
6:68	4/12/90
6:69	6/4/91
6:70	1/25/90
6:78	11/7/93
6:79	11/25/92

ENVIRONMENTAL PROTECTION—TITLE 7

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/17/90
7:1D	11/28/93
7:1E	7/15/90
7:1F	4/20/92
7:1G	10/1/89
7:1H	7/24/90
7:1I	7/18/93
7:2	6/24/93
7:3	3/21/93
7:6	12/19/88
7:7	5/7/89
7:7A	6/6/93
7:7E	7/24/90
7:7F	1/19/93
7:8	2/5/93
7:9	1/21/91
7:10	9/4/89
7:11	5/13/93
7:12	4/11/93
7:13	5/4/89
7:14	4/27/89
7:14A	6/4/89
7:14B	12/21/92
7:15	4/2/89
7:17	4/7/91
7:18	8/6/91
7:19	4/15/90

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	5/21/89
8:9	2/18/91
8:13	9/8/92
8:19	6/28/90
8:20	3/4/90
8:21	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/17/89
8:24	5/2/93
8:25	5/19/93
8:26	8/4/91
8:31	11/5/89
8:31A	3/18/90
8:31B	10/15/90
8:33	10/7/90
8:33A	4/15/90
8:33B	10/7/90
8:33C	8/20/89
8:33E	6/23/92
8:33F	1/14/90
8:33G	7/20/89
8:33H	7/19/90
8:33I	9/15/91
8:33J	5/7/89
8:33K	3/27/94
8:34	11/15/93
8:39	6/20/93
8:40	4/15/90
8:41	2/17/92
8:42	8/17/92
8:42A	6/12/91
8:42B	7/18/93
8:43	1/21/91
8:43A	9/3/90
8:43B	1/21/91
8:43E	12/11/92
8:43F	3/18/90
8:43G	9/8/91
8:43I	3/21/93
8:44	11/2/93
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90
8:52	12/15/91
8:53	8/4/91
8:57	6/18/90
8:59	10/1/89
8:60	5/3/90

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
3:61	10/6/91
3:65	12/2/90
8:70	8/19/93
8:71	2/17/94

N.J.A.C.	Expiration Date
10:81	10/15/89
10:82	10/29/89
10:83	1/19/94
10:85	1/30/90
10:87	1/27/94
10:89	9/11/90
10:90	10/14/92
10:94	1/6/91
10:95	8/23/89
10:97	4/16/89
10:99	2/19/90
10:109	3/17/91
10:112	2/17/89
10:120	9/26/88
10:121	3/13/89
10:121A	12/7/92
10:122	8/6/89
10:122A	Exempt
10:122B	9/10/89
10:123	7/20/90
10:124	12/7/92
10:125	7/16/89
10:126	11/7/93
10:127	8/26/93
10:129	10/11/89
10:130	9/19/88
10:131	12/7/92
10:132	1/5/92
10:141	2/7/94

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	2/21/94
9:2	6/17/90
9:3	9/27/93
9:4	10/30/91
9:5	1/21/91
9:6	5/20/90
9:6A	1/4/93
9:7	2/28/93
9:8	11/4/90
9:9	10/3/93
9:11	4/17/94
9:12	4/17/94
9:14	5/20/90
9:15	10/25/88

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	11/7/93
10:2	1/5/92
10:3	11/21/93
10:4	1/3/88
10:6	2/21/89
10:12	1/5/92
10:13	7/18/93
10:14	5/16/93
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:39	2/21/94
10:40	3/15/89
10:41	3/20/94
10:42	8/18/91
10:43	9/1/88
10:44	10/3/88
10:44A	11/21/93
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	11/5/89
10:66	12/15/93
10:67	3/3/91
10:68	7/7/91
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/93
10:70	6/16/91
10:71	1/6/91
10:72	8/27/92
10:80	8/23/89

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:22	7/5/93
10A:31	2/4/90
10A:32	3/4/90
10A:33	7/16/89
10A:34	4/6/92
10A:70	Exempt
10A:71	4/15/90

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	6/24/90
11:1-22	6/24/90
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	10/28/93
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92
11:15	12/3/89
11:16	2/3/91
11:17	4/18/93

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	12/19/93
12:5	9/19/93

N.J.A.C.	Expiration Date
12:6	10/17/93
12:15	8/19/90
12:16	4/1/90
12:17	1/6/91
12:18	3/7/93
12:20	11/5/89
12:35	8/5/90
12:41	1/17/94
12:45	5/2/93
12:46	5/2/93
12:47	5/2/93
12:48	5/2/93
12:49	5/2/93
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:60	3/21/93
12:90	12/17/89
12:100	11/5/89
12:105	1/21/91
12:110	1/19/93
12:112	9/6/93
12:120	5/3/90
12:175	11/28/93
12:190	1/4/93
12:195	6/24/93
12:200	8/5/90
12:210	9/6/93
12:235	5/5/91

**COMMERCE, ENERGY, AND ECONOMIC
DEVELOPMENT—TITLE 12A**

N.J.A.C.	Expiration Date
12A:9	3/7/93
12A:10-1	8/15/89
12A:11	9/21/92
12A:12	9/21/92
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	2/6/94
12A:81	2/6/94
12A:82	2/6/94
12A:100-1	9/8/91
12A:120	9/6/93
12A:121	12/5/93

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/5/93
13:2	8/5/90
13:3	4/25/93
13:4	1/21/91
13:10	3/27/94
13:13	6/17/90
13:18	4/1/90
13:19	8/23/89
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	6/4/89
13:24	11/5/89
13:25	3/18/90
13:26	9/26/93
13:27	4/1/90
13:28	5/16/93
13:29	6/3/90
13:30	4/15/90
13:31	12/12/91
13:32	10/23/92
13:33	3/18/90
13:34	10/26/93

N.J.A.C.	Expiration Date
13:35	11/19/89
13:36	11/19/89
13:37	2/11/90
13:38	10/7/90
13:39	1/6/91
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	10/31/93
13:43	9/1/93
13:44	8/20/89
13:44B	11/2/92
13:44C	7/18/93
13:45A	12/16/90
13:45B	4/17/94
13:46	6/3/90
13:47	2/2/92
13:47A	10/5/92
13:47B	2/21/94
13:47C	8/20/89
13:48	1/21/91
13:49	12/16/93
13:51	4/27/92
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:60	1/20/92
13:70	2/25/90
13:71	2/25/90
13:75	8/20/89
13:76	6/27/93
13:77	2/1/93
13:78	3/20/94

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:10	9/8/91
14:11	1/27/92
14:17	5/7/89
14:18	7/29/90

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:11	9/20/89
14A:13	2/2/92
14A:14	1/30/94
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	5/2/93
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	8/5/90
16:5	3/6/94
16:6	9/3/90
16:6	3/6/94
16:13	5/7/89
16:20A	12/17/89
16:20B	12/17/89
16:21	9/3/90
16:21A	8/20/89
16:22	2/3/91
16:25	8/15/93
16:25A	7/18/93
16:26	8/6/89
16:27	9/8/91
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	4/15/90
16:33	9/3/90
16:41	7/28/92
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	5/25/93
16:49	3/18/90
16:51	4/6/92
16:53	3/19/89
16:53A	4/15/90
16:53C	6/16/93
16:53D	5/7/89
16:54	4/7/91
16:55	6/14/93
16:56	6/4/89
16:60	6/14/93
16:61	6/14/93
16:62	4/15/90
16:72	3/31/91
16:73	1/30/92
16:75	5/13/93
16:76	2/6/94
16:77	1/21/90
16:78	10/7/90
16:79	10/20/91
16:80	11/7/93
16:81	11/7/93

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/6/93
17:2	12/17/89
17:3	8/15/93
17:4	7/1/90
17:5	12/2/90
17:6	11/22/93
17:7	12/19/93
17:8	6/27/90
17:9	10/3/93
17:10	5/6/93
17:12	8/15/89
17:16	12/2/90
17:19	3/18/90
17:20	9/26/93
17:25	6/18/89
17:27	10/7/93

N.J.A.C.	Expiration Date
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92
17:32	3/21/93
17:33	4/17/94

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:2	9/6/93
18:3	3/14/94
18:5	3/14/94
18:6	3/14/94
18:7	3/14/94
18:8	2/24/94
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	3/14/94
18:19	3/14/94
18:22	2/24/94
18:23	2/24/94
18:23A	8/5/90
18:24	6/7/93
18:25	1/6/91
18:26	6/7/93
18:30	4/2/89
18:35	6/7/93
18:36	2/4/90
18:37	8/5/90
18:38	2/16/93
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	5/26/93
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93
19:8	7/5/93
19:9	10/17/93
19:12	8/7/91
19:16	8/7/91
19:17	6/8/93
19:25	1/9/91
19:30	10/7/90
19:40	9/26/89
19:41	5/12/93
19:42	5/12/93
19:43	4/27/89
19:44	9/29/93
19:45	3/24/93
19:46	4/28/93
19:47	4/28/93
19:48	10/13/93
19:49	3/24/93
19:50	5/12/93
19:51	8/14/91
19:52	9/25/91
19:53	4/28/93
19:54	3/24/93
19:61	7/7/91
19:65	7/7/91
19:75	1/13/94

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the March 6, 1989 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1989 d.1 means the first rule adopted in 1989.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT FEBRUARY 21, 1989

NEXT UPDATE: SUPPLEMENT MARCH 20, 1989

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
20 N.J.R. 951 and 1018	May 2, 1988	20 N.J.R. 2843 and 2948	November 21, 1988
20 N.J.R. 1019 and 1126	May 16, 1988	20 N.J.R. 2949 and 3046	December 5, 1988
20 N.J.R. 1127 and 1316	June 6, 1988	20 N.J.R. 3047 and 3182	December 19, 1988
20 N.J.R. 1317 and 1500	June 20, 1988	21 N.J.R. 1 and 88	January 3, 1989
20 N.J.R. 1501 and 1594	July 5, 1988	21 N.J.R. 89 and 224	January 17, 1989
20 N.J.R. 1595 and 1758	July 18, 1988	21 N.J.R. 225 and 364	February 6, 1989
20 N.J.R. 1759 and 1976	August 1, 1988	21 N.J.R. 365 and 588	February 21, 1989
20 N.J.R. 1977 and 2122	August 15, 1988	21 N.J.R. 589 and 658	March 6, 1989
20 N.J.R. 2123 and 2350	September 6, 1988	21 N.J.R. 659 and 810	March 20, 1989
20 N.J.R. 2351 and 2416	September 19, 1988	21 N.J.R. 811 and 954	April 3, 1989
20 N.J.R. 2417 and 2498	October 3, 1988	21 N.J.R. 955 and 1036	April 17, 1989
20 N.J.R. 2499 and 2610	October 17, 1988	21 N.J.R. 1037 and 1178	May 1, 1989
20 N.J.R. 2611 and 2842	November 7, 1988		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)	
ADMINISTRATIVE LAW—TITLE 1				
1:1-5.5	Non-lawyer representatives: consent orders and stipulations	20 N.J.R. 2845(a)	R. 1989 d.158	21 N.J.R. 749(a)
1:1-10.4	Discovery: requests for admissions	20 N.J.R. 2845(b)	R. 1989 d.190	21 N.J.R. 889(a)
1:1-14.3	Interpreters for hearing impaired	20 N.J.R. 2845(c)	R. 1989 d.159	21 N.J.R. 749(b)
1:10-12.2	Emergency fair hearings concerning AFDC and General Assistance: transmittal of notices and initial decisions	20 N.J.R. 3049(a)	R. 1989 d.160	21 N.J.R. 749(c)
1:13A	Lemon Law hearings	21 N.J.R. 91(a)	R. 1989 d.189	21 N.J.R. 889(b)
Most recent update to Title 1: TRANSMITTAL 1989-1 (supplement January 17, 1989)				
AGRICULTURE—TITLE 2				
2:5-2.1, 2.3, 2.5, 2.6, 2.8	Equine infectious anemia	21 N.J.R. 92(a)		
2:24-2, 3	Registration and transportation of bees	20 N.J.R. 2951(a)	R. 1989 d.128	21 N.J.R. 633(a)
2:24-2.1	Over-wintering of bees	20 N.J.R. 2951(a)		
2:33	Agricultural fairs	20 N.J.R. 2954(a)	R. 1989 d.129	21 N.J.R. 633(b)
2:52-1.6	Reporting by small milk dealers	20 N.J.R. 2955(a)	R. 1989 d.127	21 N.J.R. 634(a)
2:69-1.11	Commercial values of primary plant nutrients	21 N.J.R. 813(a)		
2:71-2.2, 2.4	"Jersey Fresh" logo program	21 N.J.R. 591(a)	R. 1989 d.235	21 N.J.R. 1118(a)
2:71-2.4, 2.5, 2.6	"Jersey Fresh" logo program	21 N.J.R. 227(a)	R. 1989 d.234	21 N.J.R. 1118(b)
2:76-5.3	Soil and water conservation projects: cost sharing	21 N.J.R. 230(a)	R. 1989 d.213	21 N.J.R. 981(a)
2:76-9.1, 9.2	Emergency acquisition of development easements on farmland	21 N.J.R. 231(a)	R. 1989 d.214	21 N.J.R. 981(b)
Most recent update to Title 2: TRANSMITTAL 1989-2 (supplement February 21, 1989)				
BANKING—TITLE 3				
3:1-16	Mortgage loan practices	20 N.J.R. 1021(b)	R. 1989 d.191	21 N.J.R. 981(c)
3:1-16.1	Mortgage loan practices	21 N.J.R. 957(a)		
3:11	Lending and investments by State banks	21 N.J.R. 367(a)	R. 1989 d.236	21 N.J.R. 1121(a)
3:22-1	Insurance premium finance agreements	21 N.J.R. 661(a)		
3:24-5.1	Licensed check cashing	20 N.J.R. 2353(a)	R. 1989 d.219	21 N.J.R. 990(a)
3:33-1	Proposed interstate acquisition: determination of eligibility	21 N.J.R. 814(a)		
3:38-5	Repeal (see 3:1-16)	20 N.J.R. 1021(b)	R. 1989 d.191	21 N.J.R. 981(c)
Most recent update to Title 3: TRANSMITTAL 1988-7 (supplement November 21, 1988)				
CIVIL SERVICE—TITLE 4				
4:1-16.1-16.6, 24.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:2-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:3-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
Most recent update to Title 4: TRANSMITTAL 1988-3 (supplement September 19, 1988)				
PERSONNEL—TITLE 4A				
4A:8	Layoffs	20 N.J.R. 2955(b)		
4A:8	Layoffs: change of public hearing dates	20 N.J.R. 3171(a)		
Most recent update to Title 4A: TRANSMITTAL 1989-1 (supplement January 17, 1989)				

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COMMUNITY AFFAIRS—TITLE 5				
5:2-1	Organization of department (see also 5:51-1)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:2-2	Petitions for rules (recodified from 5:29-1)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:10-11.1	Hotels and multiple dwellings: correction to text			21 N.J.R. 1123(a)
5:11	Relocation assistance and eviction	21 N.J.R. 231(b)	R.1989 d.188	21 N.J.R. 891(a)
5:11	Relocation Assistance and Eviction rules: waiver of Executive Order No. 66(1978) expiration provision	21 N.J.R. 592(a)		
5:14-1.2	Neighborhood Preservation Balanced Housing Program: eligibility	21 N.J.R. 3(a)	R.1989 d.143	21 N.J.R. 750(a)
5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)	R.1989 d.10	21 N.J.R. 1123(b)
5:17	Retirement community full disclosure	21 N.J.R. 958(a)		
5:23-2.18A	Utility load management devices: installation programs	21 N.J.R. 233(a)		
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)		
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)		
5:26-1.3, 11.7	Retirement community full disclosure	21 N.J.R. 958(a)		
5:27-3.3	Rooming and boarding houses: emergency eviction of a resident	21 N.J.R. 93(a)		
5:29-1	Petitions for rules (see 5:2-2)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:29-2	Landlord-tenant relations	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:50	Administration of funds received under Higher Education Act of 1965	21 N.J.R. 367(b)	R.1989 d.227	21 N.J.R. 1133(a)
5:51-1	Handicapped Persons' Recreational Opportunities Act (recodified from 5:2-1)	Exempt	R.1989 d.237	21 N.J.R. 1122(a)
5:70-6.3	Congregate Housing Services Program: service subsidies formula	21 N.J.R. 816(a)		
5:80-3.3	Housing and Mortgage Finance Agency: return on housing sponsors' equity	21 N.J.R. 94(a)		
5:91-5.2, 6.2, 7.1, 7.3	Council on Affordable Housing: mediation process	20 N.J.R. 3050(a)		
5:92-1.3, 11.2, 14.3	Council on Affordable Housing: alternative living arrangements	21 N.J.R. 595(a)		
5:92-1.3, 12	Council on Affordable Housing: controls on affordability	21 N.J.R. 592(b)		
5:92-12.4	Council on Affordable Housing: initial pricing of units	20 N.J.R. 3051(a)	R.1989 d.125	21 N.J.R. 635(a)
5:92-14.4	Council on Affordable Housing: rental unit credit	21 N.J.R. 234(a)		
5:100	Ombudsman for the institutionalized elderly	21 N.J.R. 368(a)		
5:100	Ombudsman for the institutionalized elderly: extension of comment period	21 N.J.R. 958(b)		

Most recent update to Title 5: TRANSMITTAL 1989-2 (supplement February 21, 1989)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)

EDUCATION—TITLE 6

6:3-5	Reporting of allegations of child abuse	21 N.J.R. 3(b)	R.1989 d.193	21 N.J.R. 892(a)
6:3-6	Enforcement of drug free school zones	21 N.J.R. 817(a)		
6:8-1.1, 4.3, 7.1	High school core proficiencies	21 N.J.R. 235(a)	R.1989 d.240	21 N.J.R. 1134(a)
6:11-3	Bilingual/ESL certification; basic communication skills certification	21 N.J.R. 95(a)		
6:20-5 7	Reimbursement to nonpublic schools for asbestos removal and encapsulation	20 N.J.R. 2505(a)	R.1989 d.93	21 N.J.R. 635(b)
6:28	Special education	21 N.J.R. 239(a)		
6:39	High school core proficiencies	21 N.J.R. 235(a)	R.1989 d.240	21 N.J.R. 1134(a)
6:46-4.1, 4.4-4.20, 5.2	Private vocational schools and correspondence schools	21 N.J.R. 262(a)	R.1989 d.241	21 N.J.R. 1137(a)

Most recent update to Title 6: TRANSMITTAL 1989-2 (supplement February 21, 1989)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1-1.2	Petition for rulemaking procedure	21 N.J.R. 102(a)		
7:1C-1.2-1.5, 1.7-1.9, 1.13, 1.14	90-day construction permits	21 N.J.R. 819(a)		
7:4A	Historic Preservation Grant Program	21 N.J.R. 958(c)		
7:6	Boating rules	Emergency (expires 6-11-89)	R.1989 d.244	21 N.J.R. 1157(a)
7:6-1.44, 4.7, 9	Lanyard cut-off switch; Greenwood Lake boating; personal watercraft	Emergency (expires 6-11-89)	R.1989 d.245	21 N.J.R. 1157(b)
7:7	Coastal Permit Program	21 N.J.R. 369(a)		
7:7-2.2	Coastal wetlands boundaries in Salem County	20 N.J.R. 349(b)	R.1989 d.137	21 N.J.R. 750(b)
7:7-2.3	Waterfront development	21 N.J.R. 4(a)	R.1989 d.243	21 N.J.R. 1141(a)
7:7-2.3	Waterfront development: extension of comment period	21 N.J.R. 267(a)		
7:7A-1.4, 2.5, 6, 7	Freshwater wetlands transition areas	21 N.J.R. 596(a)		
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)		
7:7E-3.46	Hudson River waterfront development	20 N.J.R. 1982(a)		
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)		

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7-9-4	Surface water quality standards: public hearings	20 N.J.R. 1865(a)		
7-9-4	Surface water quality standards: extension of comment period	20 N.J.R. 2427(a)		
7-9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A-G	Surface water quality standards	20 N.J.R. 1597(a)		
7-9A	Individual subsurface sewage disposal systems	20 N.J.R. 1790(a)		
7-9A	Individual subsurface sewage disposal systems: extension of comment period	20 N.J.R. 2427(b)		
10-13.2, 13.10, 13.13	Industrial wastewater treatment systems: licensing of operators	20 N.J.R. 1141(b)	R.1989 d.170	21 N.J.R. 750(c)
11-2.1-2.5, 2.8-2.14	Sale of water from Delaware and Raritan Canal, Spruce Run/Round Valley system	21 N.J.R. 103(a)		
13	Flood hazard area control	21 N.J.R. 371(a)		
13-7.1(d)	Redelineation of Bound Brook within South Plainfield and Edison	20 N.J.R. 3051(b)		
13-7.1(d)	Redelineation of West Branch Rahway River, West Orange	21 N.J.R. 605(a)		
14	Water pollution control	21 N.J.R. 373(a)		
14A	New Jersey Pollutant Discharge Elimination System (NJPDDES)	21 N.J.R. 707(a)		
14A-5.12	Closure of hazardous waste facilities	20 N.J.R. 2650(a)	R.1989 d.206	21 N.J.R. 991(a)
15	Statewide water quality management planning	20 N.J.R. 2198(a)		
15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		
25-2.18	New Sweden and Oyster Creek wildlife management areas	21 N.J.R. 267(b)	R.1989 d.215	21 N.J.R. 1002(a)
25-7.13	Taking of blue crabs	21 N.J.R. 268(a)		
25-15.1	Relay of hard clams: correction to text			21 N.J.R. 751(a)
25-22.1-22.4	Harvesting Atlantic menhaden	21 N.J.R. 107(a)		
26-1.1, 1.4, 2.7, 2.11, 2.12, 2.13, 2A.8, 2B.4, 2B.8, 3.1-3.5, 3.7, 4.1-4.5, 4.7-4.10, 16.2, 16.3, 16.13	Solid waste facility and transporter registration fees	20 N.J.R. 2668(a)	R.1989 d.216	21 N.J.R. 1002(b)
26-1.4, 9.8, 9.9, 9.10, 9.11, 9.13, App. A, 12.3, 12.5	Closure of hazardous waste facilities	20 N.J.R. 2650(a)	R.1989 d.206	21 N.J.R. 991(a)
26-6.5	Interdistrict and intradistrict solid waste flow: Essex County	20 N.J.R. 1048(a)		
26-7.3, 7.4, 7.5, 7.6	Hazardous waste management	20 N.J.R. 867(a)	R.1989 d.173	21 N.J.R. 893(a)
26-7.4, 9.1, 12.1	Hazardous waste stored for reuse	20 N.J.R. 1329(a)	R.1989 d.141	21 N.J.R. 752(a)
26-9.10, 9.13, App. A	Hazardous waste facility liability coverage: corporate guarantee option	21 N.J.R. 823(a)		
26-12.4	Hazardous waste management: permit standards	21 N.J.R. 108(a)	R.1989 d.217	21 N.J.R. 1010(a)
26B-1.3, 1.5, 1.6, 1.7, 1.8, 1.9, 3.3, 5.2, 7.5, 9.2, 10.1, 13.1	Environmental Cleanup Responsibility Act rules	21 N.J.R. 402(a)		
27-16.1, 16.2, 16.5, 16.6	Volatile organic substance emissions and ozone concentrations	20 N.J.R. 3052(a)		
27A-3	Air pollution control: civil administrative penalties and adjudicatory hearings	21 N.J.R. 729(a)		
28-25	Radiation laboratory fee schedule	21 N.J.R. 826(a)		
45-1.2, 1.3, 2.6, 2.11, 4.1, 6, 9, 11.1-11.5	Delaware and Raritan Canal State Park review zone rules	21 N.J.R. 828(a)		

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8	Collection, processing, storage and distribution of blood	21 N.J.R. 407(a)		
31B-2.2, 2.4	Hospital reimbursement: DRG classification of newborns	20 N.J.R. 3057(a)	R.1989 d.154	21 N.J.R. 752(a)
31B-3.16	Hospital reimbursement: labor cost component	21 N.J.R. 661(b)		
31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.51-3.55, 3.58, 3.59, 3.73, App. II, IX, 5.1-5.3	Hospital reimbursement: extension of comment period for proposed changes published January 17, 1989	21 N.J.R. 606(a)		
31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	Hospital reimbursement: 1989 rate setting	21 N.J.R. 135(a)		
31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	1989 hospital rate setting: correction to Summary statement	21 N.J.R. 413(a)		
31B-3.19, 3.38, 3.45	Hospital reimbursement: newborn DRGs; outlier categories	20 N.J.R. 3057(b)	R.1989 d.153	21 N.J.R. 753(a)

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8:31B-3.51-3.55, 3.58, 3.59	Hospital reimbursement: appeals	21 N.J.R. 131(a)		
8:31B-4.41	Hospital reimbursement: uncompensated care audit functions	20 N.J.R. 2959(a)	R.1989 d.152	21 N.J.R. 754(a)
8:31B-5.1, 5.2, 5.3	Hospital reimbursement: Diagnosis Related Groups	21 N.J.R. 138(a)		
8:31C	Residential alcoholism treatment: facility rate setting	20 N.J.R. 2960(a)		
8:33-1.5, 2.8	Applications to convert licensed acute care beds to non-acute categories	21 N.J.R. 272(a)		
8:33J	Nuclear magnetic resonance services	21 N.J.R. 416(a)		
8:33J-1.1-1.2	Magnetic resonance imaging services	21 N.J.R. 413(b)		
8:33K	Residential alcoholism treatment facilities: bed standards	21 N.J.R. 150(a)	R.1989 d.218	21 N.J.R. 1011(a)
8:33N	Advanced life support programs: mobile intensive care units and critical care transport units	21 N.J.R. 268(a)		
8:38-1.1, 1.4	HMOs and vision care services	21 N.J.R. 6(a)	R.1989 d.180	21 N.J.R. 895(a)
8:39-19.7	Hot water temperature in long-term care facilities	21 N.J.R. 417(a)		
8:42A	Licensure of alcoholism treatment facilities	20 N.J.R. 3059(a)		
8:42A	Licensure of alcoholism treatment facilities: correction to proposal	21 N.J.R. 833(a)		
8:60-2.1 (12:120-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
8:60-2.1 (12:120-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		
8:61-2.4	Retrovir reimbursement program	21 N.J.R. 606(b)		
8:70-1.5	Interchangeable drug products: substitution of unlisted generics	20 N.J.R. 2623(a)		
8:71	Interchangeable drug products (see 20 N.J.R. 1710(b), 2376(d), 2768(b); 21 N.J.R. 63(a))	20 N.J.R. 871(a)	R.1989 d.166	21 N.J.R. 757(a)
8:71	Interchangeable drug products (see 20 N.J.R. 2769(a); 21 N.J.R. 63(b))	20 N.J.R. 1766(a)	R.1989 d.165	21 N.J.R. 756(b)
8:71	Interchangeable drug products (see 21 N.J.R. 63(c))	20 N.J.R. 2356(a)	R.1989 d.164	21 N.J.R. 756(a)
8:71	Interchangeable drug products	20 N.J.R. 3078(a)	R.1989 d.163	21 N.J.R. 755(b)
8:71	List of Interchangeable Drug Products	21 N.J.R. 7(a)	R.1989 d.142	21 N.J.R. 755(a)
8:71	Interchangeable drug products	21 N.J.R. 662(a)		

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9:6A-4.3	Managerial employees at State colleges: annual salary increases	20 N.J.R. 3079(a)	R.1989 d.220	21 N.J.R. 1011(b)
9:7-3.2	1989-90 Tuition Aid Grant Award Table	21 N.J.R. 109(a)	R.1989 d.185	21 N.J.R. 897(a)
9:7-4.4	Garden State Scholarships supplemental awards eligibility	21 N.J.R. 110(a)	R.1989 d.186	21 N.J.R. 898(a)
9:7-6.4	Garden State Graduate Fellowships: approved programs	20 N.J.R. 2624(a)	R.1989 d.184	21 N.J.R. 898(b)
9:7-8.1	Vietnam Veterans Tuition Aid: eligibility	20 N.J.R. 2625(a)	R.1989 d.183	21 N.J.R. 899(a)
9:9-11	Stafford Loan Program: institution compliance standards	21 N.J.R. 963(a)		
9:11	Educational Opportunity Fund Program	20 N.J.R. 2506(a)	R.1989 d.222	21 N.J.R. 1012(a)
9:11-1.1	Educational Opportunity Fund grants: student eligibility	20 N.J.R. 1768(b)	R.1989 d.224	21 N.J.R. 1012(b)
9:11-1.6, 1.8, 1.9, 1.20	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)	R.1989 d.221	21 N.J.R. 1011(c)
9:11-1.7	EOF grants: award amounts	20 N.J.R. 1770(a)	R.1989 d.223	21 N.J.R. 1013(a)
9:12	Educational Opportunity Fund Program	20 N.J.R. 2506(a)	R.1989 d.222	21 N.J.R. 1012(a)
9:12-2.6, 2.9	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)	R.1989 d.221	21 N.J.R. 1011(c)

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10:3-1.14	Contract administration: prohibited vendor activity	20 N.J.R. 2849(a)		
10:31	Mental illness screening and screening outreach programs	20 N.J.R. 2427(d)		
10:37-5.6-5.11, 5.16-5.24	Repeal (see 10:31)	21 N.J.R. 273(a)		
10:41-2	Services to developmentally disabled: confidentiality of client records	20 N.J.R. 2435(a)	R.1989 d.134	21 N.J.R. 757(b)
10:41-4	Human rights committees for developmentally disabled persons	20 N.J.R. 2552(a)		
10:43	Guardians for developmentally disabled persons: determination of need	20 N.J.R. 2850(a)		
10:45	Guardianship services for developmentally disabled persons	21 N.J.R. 607(a)		
10:46	Services for developmentally disabled: determination of eligibility	20 N.J.R. 2008(a)		
10:48-2	Control of viral hepatitis B among developmentally disabled	20 N.J.R. 2437(a)		
10:48-3	Lead toxicity control among developmentally disabled	20 N.J.R. 2555(a)		
10:48-3	Lead Toxicity Control Program: comment period	20 N.J.R. 2688(a)		
10:49-1.1	Medicaid program: newborn care	21 N.J.R. 965(a)		

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10:49-1.1, 1.7-1.10, 1.14, 1.17, 1.19, 1.20, 1.22, 1.24, 1.26	Medicaid Administration Manual	21 N.J.R. 417(b)		
10:54-4	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)	R. 1989 d.162	21 N.J.R. 761(a)
10:54-4.5	Medicaid reimbursement for physician's services	20 N.J.R. 2558(a)	R. 1989 d.135	21 N.J.R. 760(a)
10:56-3.7, 3.10	Medicaid reimbursement for dental services	20 N.J.R. 2558(a)	R. 1989 d.135	21 N.J.R. 760(a)
10:58-1.2, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)	R. 1989 d.162	21 N.J.R. 761(a)
10:61-3.2	Medicaid reimbursement for independent laboratory services	20 N.J.R. 2558(a)	R. 1989 d.135	21 N.J.R. 760(a)
10:63-3.9-3.12	Reimbursement of long-term care facilities: fixed property and movable equipment	20 N.J.R. 2560(a)		
10:63-3.10	Reimbursement of long-term care facilities under CARE Guidelines: correction	20 N.J.R. 2968(a)		
10:66-1.6, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)	R. 1989 d.162	21 N.J.R. 761(a)
10:66-3.2	Medicaid reimbursement for independent clinic services	20 N.J.R. 2558(a)	R. 1989 d.135	21 N.J.R. 760(a)
10:70-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only: eligibility computation amounts	21 N.J.R. 207(a)	R. 1989 d.174	21 N.J.R. 763(a)
10:72-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:81-4.5	AFDC program: voluntary restricted payments	21 N.J.R. 7(b)	R. 1989 d.205	21 N.J.R. 1013(b)
10:81-6.17	Emergency fair hearings: repealed text			21 N.J.R. 1014(a)
10:81-8.22, 8.23	Public Assistance Manual: Medicaid coverage of newborn children	21 N.J.R. 967(a)		
10:81-11.4	Direct child support payments to AFDC clients	21 N.J.R. 423(a)		
10:81-11.6	Child Support Program: incentive payment methodology	21 N.J.R. 663(a)		
10:82-5.10	Emergency Assistance in AFDC: temporary shelter allowances	20 N.J.R. 1147(a)		
10:85-3.2	General Assistance: residency in therapeutic care facility	20 N.J.R. 2968(b)	R. 1989 d.161	21 N.J.R. 764(b)
10:85-3.2	General Assistance: residency and municipal responsibility	21 N.J.R. 835(a)		
10:85-3.2	GAM application process: correction to text			21 N.J.R. 1147(a)
10:85-3.3	Medically Needy eligibility	20 N.J.R. 2688(b)	R. 1989 d.138	21 N.J.R. 765(a)
10:85-3.3	General Assistance: income and eligibility	21 N.J.R. 836(b)		
10:97	Vending Facility Program for blind and visually impaired	21 N.J.R. 424(a)		
10:100-App. A	Supplemental Security Income (SSI) payment levels (Recodified to 10:83-1.11)	21 N.J.R. 208(a)	R. 1989 d.172	21 N.J.R. 764(a)
10:120	Youth and Family Services hearings	20 N.J.R. 2742(a)		
10:121-1.1	Approval of adoption agencies: correction to text			21 N.J.R. 765(b)
10:122	Requirements for child care centers	20 N.J.R. 3079(b)		
10:123-3.2	Residential health care facilities/boarding homes: personal needs allowance	Emergency (expires 4-29-89)	R. 1989 d.171	21 N.J.R. 788(a)
10:133	Personal Attendant Services Program	21 N.J.R. 273(b)		
10:141	Charity Racing Days for Developmentally Disabled: distribution of proceeds	21 N.J.R. 8(a)	R. 1989 d.132	21 N.J.R. 636(a)
10:141-1.4	Charity Racing Days for Developmentally Disabled: distribution of proceeds	21 N.J.R. 610(a)		

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10A:3-5.10	Collection of urine samples from inmates	21 N.J.R. 10(a)	R. 1989 d.140	21 N.J.R. 765(c)
10A:4-6.1, 6.3, 6.4	Chronic violator units	21 N.J.R. 10(b)	R. 1989 d.136	21 N.J.R. 766(a)
10A:6-3.2	Notification of inmate's change of name	21 N.J.R. 11(a)	R. 1989 d.139	21 N.J.R. 766(a)
10A:9-1.3, 5.2	Application of time credits to mandatory minimum term	21 N.J.R. 664(a)		
10A:9-4.6	Open charges and reduced custody status	20 N.J.R. 880(a)	Expired	
10A:16-2.9	Infirmity care	21 N.J.R. 969(a)		
10A:16-11	Special Medical Units	21 N.J.R. 111(a)		
10A:17-8	Recreation and leisure time activities	21 N.J.R. 665(a)		
10A:18-2.5, 4.4	Correspondence between inmates at different facilities; exchange of publications	21 N.J.R. 837(a)		
10A:18-2.6, 2.19, 2.20, 2.22	Inmate correspondence	20 N.J.R. 2854(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 277(a)	R. 1989 d.204	21 N.J.R. 1014(b)
10A:18-4.7	Inspection of outgoing publications	21 N.J.R. 277(b)	R. 1989 d.203	21 N.J.R. 1014(c)
10A:33	Juvenile Detention Commitment Programs	21 N.J.R. 667(a)		
10A:34-2.16, 2.20	Municipal detention facilities: surveillance of detainees; reporting deaths	21 N.J.R. 969(b)		
10A:71-2.1, 3.4, 3.28	Parole Board rules	20 N.J.R. 2129(a)	R. 1989 d.151	21 N.J.R. 767(a)
10A:71-3.21, 6.4	State Parole Board: juvenile inmates; conditions of parole	20 N.J.R. 2747(b)	R. 1989 d.145	21 N.J.R. 768(a)

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11:1-5.1	FAIR plan surcharge: repeal rule	20 N.J.R. 2507(a)		
11:1-10	Foreign and alien property and casualty insurers: admission requirements	21 N.J.R. 426(a)		
11:2-1, 19	Repeal (see 11:17-3, 5.7)	20 N.J.R. 1152(a)	R.1989 d.192	21 N.J.R. 899(b)
11:2-3	Credit life and credit accident and health insurance: preproposal	20 N.J.R. 2969(b)		
11:2-11.1, 11.6, 11.15, 11.18, 23.3, 23.5, 23.8	Life and health insurance advertising: third-party endorsements	21 N.J.R. 970(a)		
11:2-24	High-risk investments by insurers	21 N.J.R. 838(a)		
11:3-16	Private passenger automobile rate filings	21 N.J.R. 611(a)		
11:3-17	Rating organizations: private passenger automobile filings	21 N.J.R. 973(a)		
11:3-18	Review of rate filings for private passenger automobile coverage	21 N.J.R. 839(a)		
11:3-20	Private passenger automobile insurers: financial disclosure and excess profits reporting	21 N.J.R. 667(b)		
11:3-20A	Private passenger automobile insurers: computation of excess profits	21 N.J.R. 842(a)		
11:3-22.1, 22.3, Forms A, B	Automobile coverage option survey: PIP and tort threshold	21 N.J.R. 619(a)		
11:3-24	Automobile coverage: policy constants	20 N.J.R. 3104(a)		
11:3-25	Automobile coverage: residual market equalization charges	21 N.J.R. 278(a)		
11:3-26, 27, 28	Unsatisfied Claim and Judgment Fund rules	21 N.J.R. 688(a)		
11:3-29	Automobile insurance personal injury protection: medical fee schedules	21 N.J.R. 842(b)		
11:4-32	Health service corporations: notice of increased rates	21 N.J.R. 973(b)		
11:5-1.16	Real estate listing agreements	20 N.J.R. 2185(a)		
11:5-1.18	Supervision of real estate offices	20 N.J.R. 1160(a)		
11:5-1.23	Real estate offers and broker's obligations	20 N.J.R. 2186(a)		
11:5-1.34	Discriminatory commission—split policies	20 N.J.R. 1163(a)		
11:14	Auto body repair facilities: licensure rules	21 N.J.R. 280(a)	R.1989 d.195	21 N.J.R. 908(a)
11:17-2.1	Term of insurance producer license: administrative correction			21 N.J.R. 637(a)
11:17-3, 5.7	Insurance producer licensing: professional qualifications	20 N.J.R. 1152(a)	R.1989 d.192	21 N.J.R. 899(b)
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge	20 N.J.R. 2010(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: correction	20 N.J.R. 2186(b)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: public hearing	20 N.J.R. 2478(d)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: extension of open hearing record	20 N.J.R. 2855(a)		
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12:16-4.7, 10, 13.4, 13.7, 22	Employer wage reporting, penalty abatement requests, hearings	21 N.J.R. 281(a)	R.1989 d.208	21 N.J.R. 1015(a)
12:16-4.8	Employee remuneration for lodging and meals, room and board	21 N.J.R. 689(b)		
12:17-1.6	Unemployment insurance benefits: temporary separation from work	20 N.J.R. 1333(a)		
12:17-2.4, 2.5	Requalification for unemployment insurance benefits	20 N.J.R. 1522(a)		
12:17-7.1, 7.2, 7.3	Unemployment Compensation and Temporary Disability: disclosure of information	21 N.J.R. 975(a)		
12:45-1	Vocational rehabilitation services	20 N.J.R. 3107(a)		
12:45-2	Transportation for employees of sheltered workshops	21 N.J.R. 690(a)		
12:46-12:49	Repeal (see 12:45-1)	20 N.J.R. 3107(a)		
12:56-2.1	Wage and hour compliance: trainees in company programs	21 N.J.R. 692(a)		
12:100-4.2, 5.2, 6.2, 7	Public employee safety and health: toxic and hazardous substances	20 N.J.R. 2013(a)		
12:100-11	Public employee safety and health: control of hazardous energy sources	21 N.J.R. 620(a)	R.1989 d.238	21 N.J.R. 1144(a)
12:120-2.1 (8:60-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
12:120-2.1 (8:60-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		
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COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A				
12A:12-3.9	Tourism matching grants: purchases by grantee	21 N.J.R. 114(a)	R.1989 d.175	21 N.J.R. 908(b)
12A:55	Solar energy systems: criteria for sales and use tax exemption	21 N.J.R. 282(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
2A:100-1.2, 1.3, 1.4	Commission on Science and Technology: Innovation/Partnership program	21 N.J.R. 433(a)	R.1989 d.225	21 N.J.R. 1146(a)
2A:120-2	Urban Enterprise Zone Program: certification for zone business benefits	21 N.J.R. 693(a)		

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3:1-1.1, 4.6, 5.1	Police Training Commission: training of corrections and juvenile detention officers	21 N.J.R. 695(a)		
3:10	Multiple dwelling reports concerning racial composition	21 N.J.R. 11(b)	R.1989 d.211	21 N.J.R. 1016(a)
3:21-22	Certificates of title for salvage motor vehicles	20 N.J.R. 2675(a)	R.1989 d.157	21 N.J.R. 768(a)
3:23	Commercial driving schools	21 N.J.R. 976(a)		
3:27-4.5, 4.6, 4.7, 4.8, 4.10, 4.12, 4.13	Architectural practice and responsibility	21 N.J.R. 433(b)		
3:27-8.16, 9.5	Architects and certified landscape architects: change of address; service of process	21 N.J.R. 114(b)	R.1989 d.202	21 N.J.R. 1016(b)
3:29-6	Practice of accountancy: continuing education	20 N.J.R. 2532(a)	R.1989 d.194	21 N.J.R. 908(c)
3:29-6	Continuing professional education for accountants: public hearing and comment period	20 N.J.R. 3114(a)		
3:29-6.5	Practice of accountancy: clarification concerning CPE credits	_____	_____	21 N.J.R. 1147(b)
3:30-8.5	Board of Dentistry: access to complaint history of licensees	20 N.J.R. 2680(a)	R.1989 d.63	21 N.J.R. 338(a)
3:35-6.10	Advertising and solicitation by physicians	21 N.J.R. 696(a)		
3:35-1A	Board of Medical Examiners: pre-proposed repeal	21 N.J.R. 697(a)		
3:35-1A	Board of Medical Examiners: withdrawal of pre-proposal	21 N.J.R. 937(a)		
3:38-1, 2.1, 2.3, 2.5, 2.7, 6.1	Practice of optometry: advertising; access to optometrist; patient records	20 N.J.R. 2361(b)		
3:38-2.11	Practice of optometry: delegation of duties to ancillary personnel	20 N.J.R. 2363(a)		
3:38-2.11	Practice of optometry: public hearing on delegation of duties to ancillary personnel	20 N.J.R. 2995(b)		
3:38-2.11	Practice of optometry: public hearing on delegation of duties to ancillary personnel	21 N.J.R. 284(a)		
3:38-2.11	Practice of optometry: withdrawal of proposal on delegation of duties to ancillary personnel	21 N.J.R. 881(a)		
3:39	Board of Pharmacy rules	20 N.J.R. 1648(a)		
3:39A-3.2	Unlawful practices and arrangements by physical therapists: preproposal	20 N.J.R. 2242(a)		
3:39A-5.1	Educational requirements for licensure as physical therapist	20 N.J.R. 2243(a)		
3:44D	Public movers and warehousemen	20 N.J.R. 2364(a)		
3:44D	Public movers and warehousemen: public hearing and extension of comment period	20 N.J.R. 2681(a)		
3:45A-2	Motor vehicle advertising practices	21 N.J.R. 115(a)		
3:45A-11.1	Advertising and sale of new merchandise	20 N.J.R. 2247(a)		
3:45B-4, 5	Temporary help service firms; booking agencies	20 N.J.R. 2684(a)	R.1989 d.209	21 N.J.R. 1016(c)
3:47-2.8	Legalized games of chance: organization ID numbers	21 N.J.R. 698(a)		
3:47-7.1	Bingo games	21 N.J.R. 698(b)		
3:47A-2.10	Investment advisory contracts: performance fee compensation	21 N.J.R. 12(a)		
3:70-14.5	Thoroughbred racing: testing for illegal devices	20 N.J.R. 3114(b)	R.1989 d.155	21 N.J.R. 774(a)
3:75	Practice and procedure before Violent Crimes Compensation Board	21 N.J.R. 881(b)		
3:78	Advocacy fund for crime victims and witnesses	20 N.J.R. 2997(b)	R.1989 d.156	21 N.J.R. 774(b)

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14:3-7.14	Discontinuance of residential service to tenants	20 N.J.R. 1668(a)		
14:3-9.6	Solid waste: filing contracts for service (preproposal)	20 N.J.R. 1669(a)		
14:3-10.3, 10.5, 10.15	Solid waste: out-of-state solid waste collectors (preproposal)	20 N.J.R. 1669(c)		
14:3-10.15	Annual filing of customer lists by solid waste collectors; annual reports	20 N.J.R. 2629(a)		
14:3-10.20	Solid waste: itemized billing (preproposal)	20 N.J.R. 1670(a)		
14:3-10.21	Solid waste: violations, penalties (preproposal)	20 N.J.R. 1670(b)		
14:3-10.22	Solid waste: contracts (preproposal)	20 N.J.R. 1669(b)		
14:9-4.3	Solid waste: decals for vehicles (preproposal)	20 N.J.R. 1671(a)		
14:9-4.4	Solid waste: container identification (preproposal)	20 N.J.R. 1671(b)		
14:10-6	Telecommunications: Alternative Operator Service (AOS) providers	20 N.J.R. 3115(a)		
14:17	Office of Cable Television: practice and procedure	21 N.J.R. 440(a)		

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14:18-14.6	Alteration of channel allocation: correction to text Preproposal: Statewide cable TV access channel for educational and public affairs programming	20 N.J.R. 1063(a)		21 N.J.R. 775(a)
14:18-15.1				

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14A:14-2.1	Definition of electric facility	21 N.J.R. 882(a)		
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Most recent update to Title 14A: TRANSMITTAL 1989-1 (supplement February 21, 1989)

STATE—TITLE 15

Most recent update to Title 15: TRANSMITTAL 1989-1 (supplement February 21, 1989)

PUBLIC ADVOCATE—TITLE 15A

Most recent update to Title 15A: TRANSMITTAL 1987-1 (supplement April 20, 1987)

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16:7-1.3	Auctions of buildings and excess land parcels	21 N.J.R. 13(b)	R.1989 d.131	21 N.J.R. 638(a)
16:20A-1.1, 1.3-1.5, 2.1, 2.2, 2.4, 3.1, 4.1-4.4, App. I, II	New Jersey Transportation Trust Fund: county and municipal aid	21 N.J.R. 623(a)	R.1989 d.229	21 N.J.R. 1147(c)
16:20B-1.1-1.4, 2.1, 3.1, 3.2, 4.1-4.3, 5.1, App. I, II	New Jersey Transportation Trust Fund: municipal aid	21 N.J.R. 626(a)	R.1989 d.228	21 N.J.R. 1149(a)
16:26-3	Reimbursed highway safety lighting	21 N.J.R. 628(a)	R.1989 d.230	21 N.J.R. 1151(a)
16:28-1.17	Speed limit zones along Route 147 in Cape May County	21 N.J.R. 119(a)	R.1989 d.178	21 N.J.R. 913(a)
16:28-1.25	Speed limit zones along Route 23 in Sussex County	21 N.J.R. 119(b)	R.1989 d.177	21 N.J.R. 913(b)
16:28-1.49	Speed limits on Route 35 in Monmouth County	21 N.J.R. 698(c)		
16:28-1.72, 1.75	Speed limit zones along U.S. 206 in Atlantic and Burlington counties, and Route 36 in Monmouth County	21 N.J.R. 435(a)		
16:28-1.76	Speed limit zones along Route 15 in Sussex County	21 N.J.R. 699(a)		
16:28A-1.6	Handicapped parking space on Route 7 in Belleville	21 N.J.R. 883(a)		
16:28A-1.13, 1.25, 1.46, 1.110	Restricted parking and standing along U.S. 22 in Lopatcong, Route 35 in Eatontown, U.S. 130 in Westville, and Route 91 in North Brunswick	21 N.J.R. 883(b)		
16:28A-1.18	No parking zones along Route 27 in South Brunswick and Franklin Township	21 N.J.R. 700(a)		
16:28A-1.18, 1.71	Parking and standing restrictions along Route 27 in Linden and Route 67 in Fort Lee	21 N.J.R. 978(a)		
16:28A-1.19, 1.109	Restricted parking along Route 28 in Elizabeth, and no stopping or standing zones along Route 324 in Logan Township	21 N.J.R. 701(a)		
16:28A-1.31, 1.46	Bus stop zones along Route 45 in Mannington Township and U.S. 130 in Delran Township	21 N.J.R. 701(b)		
16:28A-1.53	Parking along Route 179 in Lambertville: administrative correction			21 N.J.R. 1152(a)
16:28A-1.55	Time limit parking zones along U.S. 202 in Bernardsville	21 N.J.R. 436(a)		
16:28A-1.105	Bus stop zones along Route 54 in Atlantic County	21 N.J.R. 120(a)	R.1989 d.176	21 N.J.R. 914(a)
16:30-9.1	Use of Route 35 bridge over Manasquan River in Point Pleasant and Brielle	21 N.J.R. 437(a)		
16:31-1.26	No left turn from Route 27 in Metuchen	21 N.J.R. 702(a)		
16:31-1.27	Prohibited turns along Route 17 in Rutherford	21 N.J.R. 884(a)		
16:41-2.4	Permits for highway access: correction to text			21 N.J.R. 775(b)
16:44-1.2, 1.4	Classification of prospective bidders	Emergency (expires 5-29-89)	R.1989 d.226	21 N.J.R. 1023(a)
16:51-1.3, 1.4, 1.6, 3.1, 4.3-4.7	Practice and procedure before Office of Regulatory Affairs concerning autobus operations, companies, and services	20 N.J.R. 2635(b)	R.1989 d.144	21 N.J.R. 776(a)
16:53D	Bus carrier zone of rate freedom	21 N.J.R. 703(a)		
16:62-1.1, 1.2, 3.2, 3.5, 5.1, 9.1, 10.1	Land use within airport hazard areas	20 N.J.R. 3007(a)		
16:62-5.1, 9.1	Land uses within airport hazard areas: preproposal	20 N.J.R. 1534(a)		
16:77-1.1, 1.4, 1.5	NJ TRANSIT: fees charged to municipalities	21 N.J.R. 13(c)	R.1989 d.133	21 N.J.R. 688(b)
16:82	NJ TRANSIT: availability of public records	21 N.J.R. 284(b)		

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17:2-2.3	Public Employees' Retirement System: eligibility	21 N.J.R. 437(b)		
17:2-4.3	Public Employees' Retirement System: school year members	21 N.J.R. 979(a)		
17:2-6.4	Public Employees' Retirement System: outstanding loans at retirement	21 N.J.R. 629(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
17:3-4.3	Teachers' Pension and Annuity Fund: school year members	21 N.J.R. 980(a)		
17:3-5.9	Teachers' Pension and Annuity Fund: lump-sum purchases	21 N.J.R. 980(b)		
17:4-6.4	Police and Firemen's Retirement System: outstanding loans at retirement	21 N.J.R. 630(a)		
17:6-1.4	Consolidated Police and Firemen's Pension Fund: candidates for commission membership	21 N.J.R. 438(a)		
17:9-1.8	State Health Benefits Program: enrollment policy	20 N.J.R. 2863(a)	R.1989 d.126	21 N.J.R. 638(c)
17:9-2.4, 5.11	State Health Benefits Program: enrollment of dependents of 10-month employees	21 N.J.R. 886(a)		
17:9-2.18, 3.1	State Health Benefits Program: continuation of coverage for disabled children	21 N.J.R. 885(a)		
17:9-7.2	State Health Benefits Program: reenrollment after termination of covered public employment	21 N.J.R. 886(b)		
17:20-8.1	Lottery vendors' code of ethics	21 N.J.R. 631(a)		
17:25	Collection of educational loan debts owed by public employees	21 N.J.R. 887(a)		
17:33	Catastrophic Illness in Children Relief Fund: surcharge collection	21 N.J.R. 121(a)	R.1989 d.212	21 N.J.R. 1017(a)

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TREASURY-TAXATION—TITLE 18

18:3	Alcoholic Beverage Tax	21 N.J.R. 122(a)	R.1989 d.200	21 N.J.R. 1018(a)
18:3-2.1	Alcoholic Beverage Tax rates: correction to text			21 N.J.R. 778(a)
18:5	Cigarette Tax	21 N.J.R. 123(a)	R.1989 d.197	21 N.J.R. 1018(b)
18:6	Unfair Cigarette Sales Act rules	21 N.J.R. 124(a)	R.1989 d.199	21 N.J.R. 1019(a)
18:7	Corporation Business Tax	21 N.J.R. 14(a)	R.1989 d.196	21 N.J.R. 1019(b)
18:7-8.8	Corporation Business Tax: allocable receipts	21 N.J.R. 438(b)		
18:8	Financial Business Tax	21 N.J.R. 16(a)	R.1989 d.149	21 N.J.R. 778(b)
18:12-7.1, 7.12	Homestead tax rebate: extension of filing time	21 N.J.R. 16(b)	R.1989 d.146	21 N.J.R. 778(c)
18:15-2.15	Farmland assessment of woodland: filing of applications	21 N.J.R. 125(a)	R.1989 d.150	21 N.J.R. 779(a)
18:18	Motor Fuels Tax	21 N.J.R. 125(b)	R.1989 d.198	21 N.J.R. 1020(a)
18:19	Motor fuels retail sales	21 N.J.R. 126(a)	R.1989 d.201	21 N.J.R. 1020(b)
18:22	Public utility taxes	21 N.J.R. 17(a)	R.1989 d.148	21 N.J.R. 779(b)
18:23	Railroad Property Tax	21 N.J.R. 18(a)	R.1989 d.147	21 N.J.R. 779(c)
18:24-5.11	Fabricator/contractor sales and use tax liability	21 N.J.R. 439(a)		
18:26-3.2, 11.1, 12.11	Transfer inheritance and estate tax	21 N.J.R. 285(a)	R.1989 d.210	21 N.J.R. 1021(a)

Most recent update to Title 18: TRANSMITTAL 1989-1 (supplement February 21, 1989)

TITLE 19—OTHER AGENCIES

9:8-1.1, 3.1	Tolls on Garden State Parkway	21 N.J.R. 127(a)	R.1989 d.182	21 N.J.R. 914(b)
9:8-1.1, 3.1	Tolls on Garden State Parkway: extension of comment period	21 N.J.R. 287(a)		
9:20-2	Use of authority facilities	21 N.J.R. 887(b)		
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