

NEW JERSEY



REGISTER

*IN THIS ISSUE—
“INDEX OF PROPOSED RULES”*

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The New Jersey Register supplements the New Jersey Administrative Code. See the Index of Adopted Rules on Page 702 of the May 2 issue for the Registers that should be retained as an update to the Administrative Code.

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RULE PROPOSALS

CIVIL SERVICE

(a)

CIVIL SERVICE COMMISSION

Examinations and Applications Notice of Examinations

Proposed Repeal: N.J.A.C. 4:1-8.3 Proposed New Rule: N.J.A.C. 4:1-8.3

Authorized By: Civil Service Commission, Peter J. Calderone, Assistant Commissioner.
Authority: N.J.S.A. 11:1-7a, 11:5-1a, 11:9-7 and 11:23-8.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Peter J. Calderone
Assistant Commissioner
Department of Civil Service
CN 312
Trenton, NJ 08625

The Civil Service Commission thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-228.

The agency proposal follows:

Summary

Proposed N.J.A.C. 4:1-8.3 has been rewritten for conciseness and clarity in conformance with the Department of Civil Service policy that all rules are to be written in easily understood language. This section regulates when, how, and in what form Civil Service examinations will be announced. Changes are as follows:

In current (a)3i and ii the words "shall be published" have been substituted for "at least once" for clarity.

In current (c)5 requiring that the parts of the examination and their respective weights shall be included in the examination notice has been deleted since test parts and the relative weights assigned to these parts are properly identified after the announcement when a job analysis is performed.

Social Impact

The amendment of N.J.A.C. 4:1-8.3 will benefit the employee by enabling the Division of Examinations to announce examinations more expediently.

Economic Impact

The Division of Examinations will benefit from a more cost-effective operation in that the assignment of test weights when the test is being developed rather than prior to the announcement will further refine the testing process. The dollar cost of this saving cannot be determined at this time.

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

4:1-8.3 Notice of examinations

[(a) Notice of open competitive examinations shall be by:

1. Announcements displayed at the offices of the Commission;
2. Announcement in the Civil Service Examination Announcement Bulletin or other Civil Service Examination announcement at least two weeks before the closing date for filing applications;
3. Advertisement of the availability of the Civil Service Examination Announcement Bulletin prior to each publication date:
 - i. For positions in the State service, at least once in three daily newspapers of general circulation in the State;
 - ii. For positions in the local government services, at least once in the newspapers of general circulation throughout the State and any county, municipality or school district as the Commission shall prescribe.

(b) Individual notices of each promotion examination and an application form shall be provided by the Department of Civil Service or through the appointing authority to each employee qualified for admission to such examination.

(c) Notices of examination shall include:

1. The title of the class for which the examination is to be held;
2. The salary rate or range;
3. A reference to duties and responsibilities;

NEW JERSEY REGISTER

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4. Established minimum qualification requirements for admission of applicants;

5. The parts and respective examination weights;

6. Information concerning the filing of applications.]

(a) The availability of the Civil Service examination announcement bulletin shall be advertised prior to each publication date. For State titles, the advertisement shall be published in three daily newspapers of general circulation throughout the State. For local government titles, the advertisement shall be published in the newspapers of general circulation throughout the State and in the county, municipality or school district.

(b) Notice of open competitive examinations shall be posted in the offices of the Commission and announced in the Civil Service examination announcement bulletin at least two weeks before the closing date for filing applications.

(c) Notices of promotional examinations and application forms shall be provided by the Department of Civil Service or through the appointing authority to employees who qualify for the examination. Notice of promotional examinations shall be posted by the appointing authority throughout the organization to which the examination is open in order to notify all employees of the promotional opportunity.

(d) Examination announcements shall include:

1. The title of the examination;
2. The salary rate or range;
3. A reference to duties and responsibilities;
4. Minimum qualification requirements for admission to the examination; and
5. Information for filing applications.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING

Hotels and Multiple Dwellings Maintenance Regulations

Proposed Readoption: N.J.A.C. 5:10

Authorized By: John P. Renna, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 55:13A-6(e), -7 and -7.1.

A public hearing concerning the proposal will be held on June 15, 1983 at 10:00 A.M. at:

Department of Community Affairs
363 West State Street
Trenton, NJ 08625

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

The Department of Community Affairs thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The readoption of these rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of their readoption.

This proposal is known as PRN 1983-210.

The agency proposal follows:

Summary

The purpose of this proposal is to readopt the existing regulations for the Maintenance of Hotels and Multiple Dwellings (N.J.A.C. 5:10). The current text of the chapter is scheduled to expire on January 1, 1984, pursuant to Executive Order No. 66 (1978), commonly known as the "sunset" Executive Order. The proposed readoption does not include any changes in the present text. The Division of Housing has reviewed the existing rules and has found them to be reasonable and necessary standards for the protection of the public health, safety and welfare through proper maintenance of hotels and multiple dwellings.

The regulations have been subjected to periodic review and revision both before and after the issuance of Executive Order No. 66(1978). After their initial adoption in 1968, the regulations were amended in 1971, 1972, 1973, 1974, 1976 and 1977. Both the initial adoption and the subsequent revisions were the product of ongoing examination and analysis of maintenance codes of other jurisdictions, code and standards developed by organizations such as Building Officials and Code Administrators International, Inc. (BOCA) and the National Fire Prevention Association (NFPA) and other sources of expert opinion. When, for example, the need for revised heating requirement for late night hours as a result of the energy crisis became apparent, the State Department of Health was consulted and the adopted heating amendment incorporated the recommendation of that Department's experts. Fire safety requirements have been adopted only after consultation with experts in that field. By virtue of the statutory review of the regulations by the members of the Hotel and Multiple Dwelling Health and Safety Board, the Department has had the benefit of input from representatives of the hotel and apartment house industries and of tenant groups and others concerned with housing.

In 1978, pursuant to the Executive Order, the regulations were thoroughly reviewed, with the result that 16 subchapters that were found to have been superseded by the State Uniform Construction Code, were deleted and the remaining subchapters were extensively revised. Further amendments were made in 1980, 1981 and 1982. As part of the 1980 amendments, the chapter was reorganized into 26 subchapters (instead of the previous three) on the basis of a more logical topical grouping. The reorganization of the chapter has greatly increased the number of topical headings, with the result that the chapter has become more usable and comprehensible to inspectors and property owners alike. Topics now covered in separate subchapters include administrative principles and procedures, definitions, rules of the Hotel and Multiple Dwelling Health and Safety Board, duties of owners and occupants, general maintenance, exterior and structural maintenance, interior maintenance, waste disposal, screens and infestation, managerial and maintenance personnel, elevators, electrical service and lighting, heating, water supply, light and ventilation, storage, mailboxes, signs, building security, cooking and sanitary facilities, occupancy standards, special rules for rooming units, parking areas and driveways, fire protection and vacant buildings.

The promulgation of necessary maintenance regulations is mandated by the Hotel and Multiple Dwelling Law (N.J.S.A. 55:13A-1 et seq.). Since this law, unlike the Tenement House Law which it replaced, relies upon administrative rules for the establishment of specific standards of building maintenance, it would become a virtual nullity if the rules being proposed for readoption were to lapse. The result would be an absence of protection for residents of hotels and multiple dwellings that would be most detrimental to those residents and to the public generally. Municipal code enforcement, in those municipalities where it exists, is generally directed towards complaints and emergency situations. It is only the periodic State inspections, which may be conducted either by State inspectors or by municipal inspectors

operating under authorization from this Department, which affect all dwelling units and which can result in the corrections of violations before they reach the crisis stage and deterioration sets in.

Social Impact

The rules contain reasonable minimum standards for the maintenance of hotels and multiple dwellings. Properly enforced, they help protect the residents of these buildings and the public generally against the harmful effects of poor maintenance.

Economic Impact

The rules have had a considerable economic impact upon building owners who have been required to make significant investments in their buildings in order to correct major violations and install protective equipment such as smoke detection and building security systems. In many cases, however, such investment can have a positive effect upon the value of the buildings themselves and of other properties in the area.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:10, as amended in the New Jersey Register.

EDUCATION

(a)

STATE BOARD OF EDUCATION

**School Districts
Withdrawal from Limited Purpose Regional
School Districts**

**Proposed Readoption with Amendments:
N.J.A.C. 6:3-3.1 through 3.5**

Authorized By: New Jersey State Board of Education,
Saul Cooperman, Secretary.
Authority: N.J.S.A. 18A:4-15, 18A:13-51 to 18A:13-65.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Lorraine L. Colavita
Executive Assistant for Administrative
Practice and Procedure
Department of Education
225 West State Street
Trenton, NJ 08625

The State Board of Education thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), this rule would otherwise expire on October 1, 1983. The readoption of the existing rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of their readoption. The concurrent amendments to the existing rules become effective upon publication in the Register of a notice of their adoption.

This proposal is known as PRN 1983-242.

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66, 1978, the State Board of Education proposes to readopt with amendments N.J.A.C. 6:3-3.1 through 6:3-3.5 concerning withdrawal from limited purpose regional school districts. These rules will expire on October 1, 1983.

The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-15, 18A:13-51 to 18A:13-65, is proposing significant changes in the subchapter. The experience of several years has led the Department to clarify areas through language and technical changes.

N.J.S.A. 18A:13-51 through 65, was originally enacted on March 3, 1976. Thereafter, the statutes were amended, effective November 1, 1977. The amendments were necessary because the original statutes did not provide sufficient flexibility for the withdrawal procedure. In certain instances the law required too much time to take place between certain points in the withdrawal procedure, and in other instances it did not allow enough time between certain critical decisions. It was necessary for the Department of Education to promulgate rules and regulations which set forth an orderly procedural process in order to effectuate the implementation of the aforementioned statutes. These rules, namely N.J.A.C. 6:3-3.1 through 3.5, were adopted filed and became effective on September 8, 1976. The rules were amended in October, 1978.

Both the statutes and the rules have been utilized with fair frequency by school constituent districts which desired to undertake a study to determine the feasibility of withdrawing from a limited purpose regional school district. Several such studies were completed during the current 1982-83 school year. During prior school years, several school districts have utilized these statutes and rules to accomplish a successful withdrawal and have accordingly become kindergarten through grade 12 school districts. Among these are Mt. Oliver, Morris County; Lacey Township, Ocean County and Egg Harbor Township, Atlantic County.

It is necessary to retain these rules in order to give full force and effect to the existing statutes. If the rules were not readopted, the procedure provided for by the statutes could not be implemented successfully. Experience of utilizing the procedures set forth in the rules indicates that several technical changes are necessary to improve the process which results from the rules.

Social Impact

Prior to the enactment of the statutes upon which these rules are based, there was no method by which a constituent school district could withdraw from a limited purpose regional school district. In certain limited purpose regional school districts, particularly those with more than one high school, a constituent district could grow in pupil enrollment to the point where such enrollment totally filled one of the regional high schools. If that regional high school were located within the boundaries of the constituent district, then an obvious need developed to study the possibility of that constituent district withdrawing from the limited purpose regional, taking that schoolhouse as part of its district. Under such circumstances, that withdrawing district then became a K-12 district. Another example would involve a limited purpose regional district with one high school which is required to operate on double sessions because of the extreme growth of enrollment from one of the constituent districts. An example of this situation is illustrated by the withdrawal of the Lacey Township School District from the Central Regional School District. Lacey Township erected and occupied its own high school for grades 9 through 12 and its own middle school for grades 7 and 8. This relieved the overcrowding in the Central Regional School District.

It is clear that in the future there will be additional instances where constituent districts increase in high school enrollment to the degree where they virtually outgrow the limited purpose regional school district. Accordingly, there is a clear need for the statutory provisions and for the rules which make it possible to implement the legislative intent set forth in those statutes.

The Department of Education, in its effort to initiate concerns and comments, submitted this proposal to the following individuals and associations for review and evaluation:

Senior Staff of the State Department of Education

County Superintendents of Schools

Executive Secretary
NJ Education Assn.
180 West State Street
Trenton, NJ 08607

Executive Director
NJ Assn. of Sch. Admin.
920 West State Street
Trenton, NJ 08618

Executive Secretary
NJ Assn. of School
Business Officials
Carriage House
315 West State Street
Trenton, NJ 08618

Executive Director
NJ School Boards Assn.
315 West State Street
Trenton, NJ 08618

Executive Secretary
NJ Principals & Sup. Assn.
1720 Greenwood Avenue
Trenton, NJ 08609

As a result of this evaluation and review, the following amendments are proposed:

A review of the proposed amendments follows:

N.J.A.C. 6:3-3.1 Application and data for investigation of advisability of withdrawal. This section specifies the procedure a district board of education must follow to apply for an investigation by the county superintendent of schools. There is no change in text, except for technical changes.

N.J.A.C. 6:3-3.2 Investigation and report by the county superintendent of schools. The procedure of reporting the results of an investigation by the county superintendent is outlined. The code provides items that shall be included in the report. Several technical corrections are proposed.

N.J.A.C. 6:3-3.3 Special school election. This section specifies procedures for special school election. There is no change in the text.

N.J.A.C. 6:3-3.4 Final determination of board of review. The board of review must insure that a thorough and efficient system of public schools will be maintained when granting a decision. There is no change in the text.

N.J.A.C. 6:3-3.5 Effective date of withdrawal. The commissioner determines the effective date of withdrawal. There is no change in text.

Economic Impact

The economic impact occurs when a constituent district withdraws successfully from a limited purpose district. The withdrawal by the constituent reduces the budget of the limited purpose regional. The constituent that withdraws either assumes the cost of one of the regional high schools or the constituent builds its own high school.

If the withdrawal is not successful, there is no economic impact. The withdrawal is decided by the voters. Voter approval causes

economic impact, as the result of a successful referendum vote on the withdrawal. Sources of funding involved are State equalization aid and the amount raised by local taxations (approved by voters at an annual school election).

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

SUBCHAPTER 3. WITHDRAWAL FROM LIMITED PURPOSE REGIONAL SCHOOL DISTRICTS

6:3-3.1 Application and data for investigation of advisability of withdrawal

(a) [The] **Any district** board of education [of any local school district] constituting part of a limited purpose regional school district or the governing body of such local school district, may apply to the county superintendent of schools to make an investigation as to the advisability of withdrawal of such constituent district from the regional district. Such body shall adopt a resolution by a recorded call vote of the majority of the full membership requesting that the county superintendent make such investigation. The resolution request submitted to the county superintendent shall include the following information:

1. A general description of the regional district and of the withdrawing constituent district, including, but not limited to, the type of educational system, number of schools and grade levels served, community population, and geographical characteristics;

2. Enrollment data, including the number of pupils enrolled as reported by grade on **the** October 1 [and June 30 last,] **Application for State School Aid** and estimated projected enrollments, by grade level, for the succeeding five school years for both the withdrawing district and the remaining regional district, based on growth factors using average percentages for the last three school years;

3. The racial composition of the pupil population enrolled in the regional district from the withdrawing district, and the effect of such withdrawal upon the racial composition of the remaining pupil population of the regional district;

4. Two appraisals of each school site which is part of the regional district prepared by qualified appraisers. If two or more constituent districts request such a study, the selection of the appraisers and the cost of the required appraisals shall be made and shared jointly;

5. The proposed educational plan for the pupils from the withdrawing district presently enrolled in the school or schools of the regional district.

(b) Within 21 days following adoption of such resolution, such body shall confer with the remaining constituent districts, the governing bodies of the constituent districts, the regional board of education and the county superintendent to review the procedure required for withdrawal from a limited purpose regional school district. Such conference may be called by the county superintendent at the request of a constituent district prior to its adoption of such resolution.

6:3-3.2 Investigation and report by county superintendent of schools

(a) Upon receipt of the [aforementioned] resolution and accompanying data pursuant to N.J.A.C. 6:3-3.1, the county superintendent shall make an investigation and shall within 60 days after receipt of such request issue a report, in accordance with N.J.S.A. 18A:13-52, to the governing bodies of the municipalities constituting the regional district, the boards of education of the constituent districts and the board of education of the regional district. When the county superintendent has begun such investigation, no action shall be taken upon a subsequent request from another constituent district of the same regional district until the investigation, report and action thereon have been completed. This report shall include, but not be limited to, the following:

1. A general description of the regional district, including the

number of constituent districts, schoolhouses, area of the total district, and area of the withdrawing district;

2. Enrollment data, including the number of pupils enrolled as reported by grade on the October 1 [and June 30 last,] **Application for State School Aid** and estimated projected enrollments, by grade level, for the succeeding five school years for both the withdrawing district and the remaining regional district, based on growth factors using average percentages for the last three school years;

3. Enrollment data, by grade level, showing the racial composition of the present regional pupil population, and the resulting racial composition for both the withdrawing district and the remaining regional district, if withdrawal is approved;

4. The operating expenses of the limited purpose regional district for the present school year, including the distribution of such current operating expenses among the constituent districts;

5. The equalized valuation of each [constituent] **constituent** district of the regional district as set forth in N.J.S.A. 18A:7A-1 et seq.;

6. The average equalized valuations of the real property of each [constituent] **constituent** district of the regional district, as set forth in N.J.S.A. 18A:24-1;

7. The borrowing margin of each constituent district of the regional district as determined by N.J.S.A. 18A:24-1 et seq., and the revised borrowing margin of each constituent district and the withdrawing district, if approval is granted;

8. The apportionment of debt service for the current school year among all of the constituent districts of the regional district by dollar amounts and percentages;

9. The replacement costs of school houses and additions, grounds, furnishings and equipment of the regional district, and the replacement cost of any schoolhouse, and additions of the regional district, including grounds, furnishings, and equipment, situated in the withdrawing district. School building replacement costs will be calculated by the Bureau of Facility Planning Services as follows:

i. The current [over-all] **overall** cost per square foot for school construction in New Jersey, updated annually in the fall of each year, will be multiplied by the gross area of the building;

ii. This figure will include construction costs, moveable and built-in furniture and equipment, and fees;

iii. Site costs will be excluded since they are already included under N.J.A.C. 6:3-3.1(a)4;

10. The amount of indebtedness, if any, to be assumed by the withdrawing constituent district;

11. The distribution of assets and liabilities of the existing regional district and remaining regional district following withdrawal in the manner as provided by N.J.S.A. 18A:8-24;

12. A proposed educational plan for the withdrawing constituent district, if withdrawal is approved, including the effects of such withdrawal upon the educational program of the remaining regional district;

13. A summary of the advantages of withdrawal to both the withdrawing constituent district and the remaining regional district and the disadvantages to the withdrawing constituent district and the remaining regional district[.];

14. A recommendation regarding the request for withdrawal from the limited purpose regional school district shall be included by the county superintendent.

(b) Upon adoption of a resolution, in accordance with N.J.S.A. 18A:13-51, the board of education of the limited purpose regional school district shall not incur any additional indebtedness for capital projects, pending either the rejection of the proposal at a special school election or an effective date of withdrawal is determined by the Commissioner of Education.

6:3-3.3 Special school election

(a) Upon completion of the procedures contained in N.J.S.A. 18A:13-54 to 56, the county superintendent shall confer with the regional board and the boards of education of the constituent

districts and fix a day and time for holding a special school election, in accordance with the provisions of N.J.S.A. 18A:13-57.

(b) To be effective the proposal must be adopted by a majority of the legal votes cast within the withdrawing constituent district, and, in addition, a majority of the combined legal votes cast within the remainder of the regional district.

6:3-3.4 Final determination of board of review

The board of review shall include in its final determination, required by N.J.S.A. 18A:13-56, any specific conditions under which its consent is granted in order to insure that a thorough and efficient system of public schools will be maintained in the withdrawing district or districts and the remaining regional district.

6:3-3.5 Effective date of withdrawal

If approved at said election, the withdrawal of the district shall become effective upon a date to be determined by the Commissioner of Education, pursuant to the provisions of N.J.S.A. 18A:13-59.

(a)

STATE BOARD OF EDUCATION

**Business Services
Tuition for Private Schools for the
Handicapped**

**Proposed Repeal: N.J.A.C. 6:20-4.1 and 4.2
Proposed New Rules: N.J.A.C. 6:20-4.1 and
4.2**

Authorized By: New Jersey State Board of Education,
Saul Cooperman, Secretary.
Authority: N.J.S.A. 18A:4-15 and 18A:46-21.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Lorraine L. Colavita
Executive Assistant for Administrative
Practice and Procedure
Department of Education
225 West State Street
Trenton, NJ 08625

The State Board of Education thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-241.

The agency proposal follows:

Summary

The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-15 and 18A:46-21, proposes to repeal the current text of N.J.A.C. 6:20-4.1 and 4.2 concerning tuition for nonpublic schools and propose new rules concerning tuition for private schools for the handicapped.

The proposal requires that a formula be prescribed by the Commissioner of the Department of Education with approval of the State Board for the establishment of maximum tuition rates for pupils placed in private schools for the handicapped.

Pursuant to N.J.S.A. 18A:46-21, a private school for the

handicapped tuition rate may not exceed the maximum day class cost per pupil in a similar special education class in New Jersey public schools. Changes in the existing code are necessary to allow private schools for the handicapped to charge tuition rates which are fair and equitable and reflect the actual costs for services up to the maximum rate approved annually.

The proposal establishes the maximum day class cost formula and the Department of Education tuition rate approval process.

N.J.A.C. 6:20-4.1, Maximum day class cost formula establishes the maximum day class cost formula based on the 85 percentile public school per pupil cost utilizing the net current expense budget (N.C.E.B.) to determine the incremental difference for each year the formula is applied beyond the year of the actual costs used in the calculation.

N.J.A.C. 6:20-4.2, Tuition rate approval process establishes the private school for the handicapped tuition rate approval process including budget submission format, detailed guidelines of permissible costs, certified audit requirements as well as Department of Education tuition audit rights.

Social Impact

Based on the 1980 census information, approximately 5,900 handicapped pupils have been placed in the 133 New Jersey approved private schools for the handicapped. The population served is generally the severely handicapped, the majority of whom have been classified as emotionally disturbed or neurologically impaired. The intent of the proposal is to allow private schools for the handicapped to increase services to the severely handicapped population that they serve by allowing tuition rates to reflect the actual cost of services provided. Children are only placed in private schools for the handicapped when it has been determined by a district's child study team, with approval by the district board of education, that this would be the most appropriate placement for a handicapped pupil.

Economic Impact

The proposed amendments would impact on local school districts in fiscal year 1983 and the State budget in 1985. The actual cost cannot be determined until the new maximum tuition rates are calculated. However, it is estimated that the immediate economic impact of the proposal would be negligible in cost. The projected long range economic impact would be the establishment of an equitable and accountable system of tuition rate determination.

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

SUBCHAPTER 4. [TUITION NONPUBLIC SCHOOLS]
**TUITION FOR PRIVATE SCHOOLS
 FOR THE HANDICAPPED**

6:20-4.1 [Rules for determination of tuition formula] **Maximum day class cost formula**

[(a) Categories of handicap as used in this tuition formula are those given in N.J.S.A. 18A:46-1.

(b) "Incremental difference" shall refer to the expected percentage of annual increase or decrease in class operating costs in the public schools of New Jersey (cf. Annual Financial Report of the Commissioner of Education).]

(a) The Department of Education shall determine the maximum day class cost per category of handicap(s) as follows:

1. The 85 percentile of the ranked public school basic class cost per category of handicap(s) for special education pupils shall be determined pursuant to N.J.A.C. 6:20-3.4. The result shall present the basic class cost per pupil for each category of handicap in a similar special education class in New Jersey public schools.

(b) The State average percentage increase per pupil in the net current expense budget (N.C.E.B.) shall be applied as the

incremental difference for each year in which the formula is applied which is beyond the year of costs used in this calculation.

(c) The maximum day class per pupil costs for pupils placed in private schools shall be determined annually by the Department of Education. These costs shall represent the maximum tuition rate that an approved private school for the handicapped can charge to a district board of education for each handicapped pupil.

6:20-4.2 [Formula for calculation of tuition rate] **Tuition rate approval process**

[(a) The 85th percentile of the ranked per pupil cost for each class program in New Jersey public schools in each category of handicap, shall be obtained from the figures reported to the Division of Business and Finance.

(b) The amount obtained under (a) above shall be adjusted by an incremental difference to be determined by the Commissioner of Education for each year to which this formula is applied which is beyond the year of actual costs used in calculation.

(c) The maximum tuition rate for each category of handicap shall be the amount which applies under (b) above.

(d) Nonpublic schools will be required to provide information related to educational costs to determine their individual school's tuition rate.

(e) If the educational tuition rate is at the tuition rate determined by (b) above, it will become the tuition rate; if below, the lower rate governs. If their educational tuition rate exceeds the maximum as determined by (b) above, the school will be required to adhere to the established tuition rate.]

(a) Each private school for the handicapped shall submit its proposed budget to the Department of Education for approval on forms provided for such purpose.

(b) The Department of Education shall establish the publish guidelines each year that detail what costs are permissible in the calculation of approved tuition rates by a private school for the handicapped.

(c) Based on the budget submitted, the Department of Education shall approve annually the proposed tuition rate(s) that a private school for the handicapped may charge for public school handicapped pupils.

(d) This tuition rate(s) shall be verified by the Department of Education at the end of each school year through the submission of a certified audit of expenditures by each private school for the handicapped. Any appropriate rate adjustment necessary as a result of the certified audit shall be made in the next fiscal year.

(e) Tuition audits may be performed by the Department of Education to verify expenditures according to approved budgets. If overcharges are found, monies owed to local school districts shall be repaid within two school years.

(f) After June 30, 1984, tuition rates for a subsequent school year will only be established for a private school for the handicapped that has submitted a certified audit to the Department of Education.

(a)

STATE BOARD OF EDUCATION

Special Education

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

Authorized By: New Jersey State Board of Education,
Saul Cooperman, Secretary.
Authority: N.J.S.A. 18A:4-15, 18A:7A-1 et seq., 18A:7B-1 et seq., 18A:7C-1 et seq., 18A:46-1 et seq., 18A:46A-1 et seq., U.S.P.L. 93-112, Section 504 and 94-142.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Lorraine L. Colavita
Executive Assistant for Administrative
Practice and Procedure
Department of Education
225 West State Street
Trenton, NJ 08625

The State Board of Education thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), this rule would otherwise expire on August 1, 1983. The re-adoption of the existing rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of their re-adoption. The concurrent amendments to the existing rules become effective upon publication in the Register of a notice of their adoption.

This proposal is known as PRN 1983-240.

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66, 1978, the State Board of Education proposes to re-adopt with amendments N.J.A.C. 6:28 concerning special education. These rules will expire on August 1, 1983.

The proposed amendments to the rules for special education reflect the progress and improvement in the education of handicapped children in New Jersey. In 1954, State statutes were enacted to provide instruction to each child classified as mentally retarded or physically handicapped. Additional legislation was passed in 1959 mandating special education programs in public schools and education of socially maladjusted and emotionally disturbed children. By the late 1960s and into the 1970s, services for handicapped pupils increased and improved markedly. This was the result of consolidation of previous legislation, adoption of the State sales tax and the revision of legislation related to State aid for local school districts.

Special education rules were adopted in June, 1955, and amended in September, 1966; August, 1975; March, 1976. In August, 1978, the rules for special education were amended reflecting the continued growth of services, clarification of the role of the child study team and enactment of United States Public Law 94-142, Education of the Handicapped Act.

The current amendments to the rules for special education are authorized by N.J.S.A. 18A:46 and U.S.P.L. 94-142. Notice was sent to affected interested persons and organizations regarding the intent of the Department of Education to amend the rules. Open hearings were announced and held in four central locations throughout the State. Comments from these hearings were taped and included for consideration in the amendment process. Affected

interested persons and organizations were asked to contribute written statements regarding the rules. All comments and written statements were reviewed. Drafts of the rules were developed and distributed to internal agency senior managers, special education staff and major affected organizations.

The past effectiveness of the rules has been very positive, based on the quality of programs reported to the Department of Education. Many of the special education programs in the State have been cited by national agencies as exemplary. The growth of services and programs, since the inception of special education legislation, attests to the effectiveness of the rules. There are a greater number of handicapped children receiving and completing their education today than in the past. The rules should be amended to continue to support needed services and programs for handicapped children. The amended rules have been stated more clearly and refined to reflect the changes in professional practices regarding the emphasis on program development rather than classification and labeling, prevention of undue evaluations, protection of the rights of parents and pupils, and effective procedures for the development of individualized education programs. The amended rules also reflect provisions of recent legislation regarding preschool handicapped children.

The overall intent of these amendments is to ensure that all handicapped children receive an appropriate education commensurate with their needs and aspirations.

A review of the proposed amendments follows:

N.J.A.C. 6:28-1 General provisions

This subchapter addresses all general requirements for district boards of education regarding the identification, evaluation, individualized education program development and placement. Also included are definitions of terms and due process procedures.

This subchapter has been reorganized to strengthen the determination of eligibility and development of the individualized education program (IEP) prior to classification. It also allows for a case by case determination by the child study team if a comprehensive reevaluation is necessary.

Definitions that had previously appeared in other parts of the code have been moved to this subchapter as well as including all definitions concerning the preschool law and the State Facilities Act which are now included in these rules.

The due process procedures have been consolidated and modified to comply with recent court decisions and newly adopted Office of Administrative Law (OAL) rules. Administrative reviews will be the responsibility of the Department of Education but the hearings will now be held by the OAL.

N.J.A.C. 6:28-2 Educational programs of local school districts

This subchapter describes the requirements regarding the provision of educational programs for handicapped pupils and the various program options available. Certification and personal development requirements are also included.

This subchapter clarifies that a child's IEP will establish the graduation requirements for a handicapped child.

Provision is now made for programs for preschool children.

Each district board of education will be required to establish and implement a comprehensive personnel development plan in keeping with the new emphasis on the provision of programs and not labeling children.

Procedures are now specified for a smooth transition from elementary to secondary school.

N.J.A.C. 6:28-3 Eligibility of district boards of education to receive State funds

This subchapter describes the requirements for establishing who will determine eligibility of district boards of education to receive State funds. Eligibility criteria, length of school day and year, transportation and special education planning are included.

Modifications allow for an increased caseload of secondary

resource room teachers and the elimination of the requirement for dual certification in secondary subject area and special education for teachers of content courses.

Changes in the transportation section were made to enhance the health, safety and welfare requirements.

N.J.A.C. 6:28-4 Approval of private schools for the educationally handicapped

This subchapter describes the procedures and criteria for the approval of private schools for the handicapped, including expenditure of funds, program criteria, records, length of school day and year, and placement by parents.

This subchapter now specifies the criteria for Department approval of private school programs, as well as the funding. Budget item approval is also now given to the Department.

New program approval must be based on a needs assessment. In addition, contract requirements with local education agencies (LEAs) are expanded.

N.J.A.C. 6:28-5 Auxiliary services for nonpublic school pupils

This subchapter addresses the responsibility of district boards of education to ensure availability of auxiliary services for nonpublic school children as required by P.L. 1977, c. 192.

Amendments were made to provide clarity of language for provision of services to nonpublic school pupils.

N.J.A.C. 6:28-6 Evaluation, classification and corrective speech services for nonpublic school pupils

This subchapter addresses the responsibility of district boards of education to ensure evaluation, classification, and corrective speech services for nonpublic school pupils as required by P.L. 1977, c. 193.

Amendments were made to improve clarity of language for provision of services to nonpublic school pupils.

N.J.A.C. 6:28-7 Approved private clinics and agencies

This subchapter describes procedures and criteria for the approval of private clinics and agencies providing evaluation and related services to nonpublic school pupils.

Amendments were made to include specific definitions of clinics and agencies, as well as the criteria for evaluation.

N.J.A.C. 6:28-8 Special education intermediate units

This subchapter describes procedures for the planning and provision of educational programs by special education intermediate units. These units are county special services districts, educational services commissions and jointure commissions.

Amendments were made to improve clarity in language including responsibility for annual review and tuition rate determination.

N.J.A.C. 6:28-9 Special education programs operated by or under contract with the Department of Education

This subchapter addresses the responsibility for pupils, as well as budgetary and program review for special education programs operated by or under contract with the Department of Education.

Amendments were made to include tuition payment, issuing of progress reports, annual budget approval and program review.

N.J.A.C. 6:28-10 State facilities education

This subchapter describes requirements for State-operated facilities serving handicapped pupils. It includes program planning, eligibility criteria for State-operated programs to receive Department of Education funds, program reviews, individualized education program development, student improvement plans and due process. This subchapter spells out the rules authorized by P.L. 1979, c. 207, the State Facilities Education Act.

This subchapter requires that State facilities providing educational programs for handicapped pupils comply with

N.J.A.C. 6:28, and specifies the procedures for program approval, responsibility for classification of pupils, program review, individualized education program development, due process and surrogate parents. These rules vary slightly because of the unique population served, for example, children in correctional facilities.

Social Impact

The social impact of the special education rules on the public has been profound. The quality of programs and the growth of the number of handicapped children served are due to public support of special education. The social conditions which existed at the time these rules were adopted have changed, however, the public's expectations for educating the handicapped have not. Public advocacy groups were largely responsible for affecting legislation for the handicapped in the past. Presently, there is large scale support for programs from a variety of publics including legislators, parents, former pupils and community-based groups. The parents of handicapped pupils are accustomed to the level of services being offered today and want to maintain and improve quality programs.

There would be an intense public outcry if these rules were not readopted. A good example is the recent public response to the proposed changes in the Federal regulations for educating the handicapped.

A schedule of the growth of handicapped children counted for United States P.L. 94-142 follows:

Year	P.L. 94-142, Child Count
1978	142,121
1979	144,424
1980	141,994
1981	151,303
1982	158,951

Economic Impact

The amended rules will not have a significant economic impact that would increase State or local expenditures. The rules incorporate provisions for implementation of P.L. 1981, c. 415, which mandates that district boards of education provide educational programs and services for handicapped children three to five years of age. The preschool handicapped program will first impact on the State budget in fiscal year 1984. The Department estimates that special education aid and transportation State aid will increase by approximately \$11.8 million in the first year. This projection is based on approximately 9,300 preschool handicapped children being served. The local costs are estimated to be approximately \$3 million.

A schedule of total State aid for educating handicapped pupils from 1978 to 1982 is listed below. The State aid includes categorical aid, transportation costs, pilot preschool programs and aid to the Katzenbach School for the Deaf.

Fiscal Year	Total State Aid
1978	\$107,000,000
1979	124,000,000
1980	136,000,000
1981	162,000,000
1982	186,000,000

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

SUBCHAPTER 1. GENERAL PROVISIONS

6:28-1.1 General requirements

(a) The following [rules and regulations] **chapter**, adopted by the

State Board of Education, supersedes all existing rules [and regulations] pertaining to [the] educationally [of the] handicapped pupils.

(b) [These regulations] **The rules in this chapter shall apply to all public [or] and private agencies providing publicly funded educational services to educationally handicapped pupils. [by means of public funds. Such agencies shall include, but not be limited to, all local boards of education, county boards of special services school districts, jointure commissions, and educational services commissions.]**

(c) Each [local] **district board of education through its child study teams [school district is required to] shall identify and [classify] determine eligibility for special education and related services for all educationally handicapped pupils between the ages of [five] three and [20] 21 and [to] shall provide to each pupil identified and [classified] determined eligible for special education services a free, appropriate education and an individualized education[al] program. Each local school district may provide the services described in [these regulations] this chapter to pupils below the age of [five] three and above the age of [20] 21.**

(d) [Every local school district] **All public and private agencies providing publicly funded educational services to educationally handicapped pupils shall submit, as required by the Department of Education, a [an annual] program plan for special education [and related services to] for educationally handicapped pupils which meets the requirements of [these regulations] this chapter [and any other requirement prescribed in the annual state plan for special education].**

(e) Special consideration shall be given to the prevention and early discovery of learning handicaps and to the provision of appropriate educational programs.]

(f) (e) [Every effort shall be made to prevent needless public labeling or other attendant publicity regarding educationally handicapped pupils. Local] **District boards of education shall develop a written [policies] policy to prevent the [needless] use of pupil names at public meetings [or in board of education meetings].**

(f) **Every pupil determined to be educationally handicapped in accordance with this chapter shall be provided with a special education program and related services as defined in a written individualized education program.**

(g) The [State] Department of Education shall [carry out activities] **develop a State plan to [insure] ensure that teachers, administrators and pupil personnel services specialists in [public] local school districts are fully informed about their responsibilities for implementing these regulations. A component of this plan [and are provided with] shall provide for inservice education programs [and information necessary to carry out provisions of these regulations] through a State comprehensive system of personnel development established and implemented pursuant to specific personnel development priorities.**

(h) **District boards of education shall ensure that the rights of educationally handicapped pupils of their local school district are protected. When no parent(s) can be identified or a pupil is a ward of the State, the chief school administrator shall assign an individual to act as surrogate parent for that pupil. The surrogate parent shall represent the pupil in all matters relating to the identification, evaluation, program development, and educational placement of the educationally handicapped pupil in the provision of a free, appropriate public education. If a surrogate parent is needed for an educationally handicapped pupil placed in a State-operated program located at a distance from the local school district, the chief school administrator may request the Department of Education to assist in the assignment of a surrogate parent within the approximate geographical area of the State-operated program.**

(i) **Instructional staff shall be provided time to participate in parent meetings and child study team conferences as required in accordance with this chapter.**

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

6:28-1.2 Definitions

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

["Classification officer" means a person designated by the Commissioner of Education to conduct impartial hearings consistent with these regulations.]

"Adaptive behavior" means the characteristics of personal independence and social responsibility as established by age and by a child's sociocultural group expectations.

"Auxiliary services" means compensatory education services, supportive services for acquiring communication proficiency in the English language for children of limited English-speaking ability, supplementary instruction services and home instruction services for nonpublic school pupils as defined in this section.

1. "Compensatory education" means preventive and remedial programs in basic communication and computational skills defined in N.J.A.C. 6:8-1.1.

2. "Supportive services for acquiring communication proficiency in the English language for children of limited English-speaking ability" means programs in English as a second language.

3. "Supplementary instruction" means instruction provided for a nonpublic school pupil classified as educationally handicapped pursuant to N.J.S.A. 18A:46-8, which is given in addition to the regular instructional program of such pupil as set forth in this chapter.

"Board of education" in N.J.A.C. 6:28-5 and 6 means the board of education of the district in which the nonpublic school pupil is domiciled.

"Child study team" means an interdisciplinary group of appropriately certified persons who evaluate and determine eligibility of pupils for special education and related services. This team also develops and guides the implementation of individualized education programs.

"Corrective services" means the services provided by the certified speech correctionist to each nonpublic school pupil classified as having an articulation disorder requiring these services. The identification, evaluation and classification processes are not to be considered as corrective services.

"Department of Education" means the Commissioner of Education or designee.

"Educationally handicapping condition" means a condition [one] which impairs the pupil physically, emotionally, [intellectually] cognitively, academically or socially to such an extent that special education [and related services] as determined and described in [these regulations] this chapter [are] is necessary to provide a free [and], appropriate education. These conditions shall include:

1. "Auditorily handicapped" means an inability to hear within normal limits due to physical impairment or dysfunction of auditory mechanisms [as distinguished] differentiated by the following:

i. "Deaf" means loss of hearing[,] which is so severe that the pupil is impaired in processing linguistic information through hearing, with or without amplification, and education[al information] is adversely affected;

ii. "Hard of hearing" means a loss of hearing[,] which may be permanent or fluctuating and adversely affects a pupil's education[al performance], but which is not severe enough to warrant classification of a pupil as "deaf".

2. "Chronically ill" [means a temporary or permanent health condition which makes it impractical to receive adequate instruction through a regular school program and is distinguished by the following:

i. "Chronic illness" means a [chronic] condition such as

tuberculosis, lowered vitality, cardiac condition, leukemia, asthma, seizure disorders or other physical [disabilities] **disability** which makes it [impracticable] **impractical** for the [child] **pupil** to receive adequate instruction through the regular school program.

[ii. "Eligible for home instruction" means a temporary illness or injury which requires individualized instruction be provided to pupils confined to their homes or hospitals for a short period of time as determined by the school physician.]

3. "Communication handicapped" means impaired native speech or language [that] **which** is outside the range of acceptable variation and adversely affects a pupil's educational performance and/or interpersonal relationships, and **which** is not due primarily to hearing impairment as defined under "[A] **auditorily handicapped**" [as distinguished] **and differentiated** by the following:

i. "Communication handicapped" means a [communication disorder in native speech or language to a severe extent] **severe speech or language disorder** which seriously interferes with the ability to use oral language to communicate;

ii. "Eligible for speech correction services" means a [condition characterized by the presence of defective and incorrect sounds, including substitutions, omissions, additions, distortions of the speech sounds and other speech impediments as defined in rules and regulations pursuant to Public Law 94-142] **mild to moderate disorder in language, articulation, voice or fluency** which requires individualized [instruction] **programming** by a speech correctionist [,] (and is not due primarily to hearing impairment as defined under "Auditorily handicapped"). This definition does not include pupils participating in language programs conducted by speech correctionists on a general basis.]

4. "Emotionally disturbed" means he exhibiting of behavioral disorders over an extended period of time which adversely affects educational performance and may be characterized by any of the following [manifestations]: [an inability to learn which cannot be explained by intellectual, sensory or health factors;] an inability to build or maintain satisfactory interpersonal relationships; [inappropriate behaviors or feelings under normal] **behaviors inappropriate to the circumstances**; a general or pervasive mood of [unhappiness or] depression; and/or the development of physical symptoms or irrational fears relating to personal or school problems. This definition does not include social maladjustment as described in [these regulations] **this chapter**.

5. "Mentally retarded" means [possessing an intellectual capacity below the average range of intelligence and having deficits in adaptive behavior which adversely affect educational performance and social functioning as distinguished by the] **cognitive, social, and academic functioning which is critically below age expectations. Such functioning is comprehensive in nature in that it is demonstrated in home, school, and community settings, and is differentiated as follow[ing]s:**

i. "Educable" means a level of [retardation which is characterized by intellectual capacity, as measured by a clinical test of intelligence, within a range encompassing approximately one and one-half to three standard deviations below the mean and a low level of ability to think abstractly;] **cognitive development and adaptive behavior in home, school, and community settings that are below age expectations with respect to all of the following: the quality and rate of learning; the use of symbols for the interpretation of information and the solution of problems; performance on an individually administered test of intelligence that falls within a range of two to three standard deviations below the mean when the pupil is compared psychometrically to his or her age group;**

ii. "Trainable" means a level of [retardation which is characterized by intellectual capacity, as measured by a standardized clinical test of intelligence, which falls beyond three standard deviations below the mean;] **cognitive development and adaptive behavior that is below age expectations with respect to all of the following: [an inability] the ability to use symbols in the solution of problems of [even] low complexity; [and an inability] the ability to function**

socially without direct and close supervision[;] **in home, school, and community settings; performance on an individually administered test of intelligence that falls beyond three standard deviations below the mean, when the pupil is compared psychometrically to his or her age group;**

iii. "Eligible for day training" means a level of [retardation characterized by an inability to give evidence to a basic child study team of understanding and responding in a positive manner to simple directions expressed in the mode of primary communication and to express basic wants or needs due to mental retardation] **functioning below age expectation whereby the pupil demonstrates an inability to understand and respond to simple verbal or nonverbal communication, demonstrates an inability to make known basic wants or needs, and requires total personal care and supervision.**

6. "Multiply handicapped" means the presence of two or more educationally handicapping conditions which interact [and result in problems so complex] **in such a manner** that [placement in programs] **programming** designed for [a single] **singular** handicapping conditions will not result in [significantly] meaningful educational growth and achievement. All [such] **evident** educational handicaps shall be **documented and indicated [for] in [classification] the individualized education program** of the pupil. Eligibility for speech correction services as defined in [these regulations] **this chapter** shall not be indicated as one of the handicapping conditions which forms the basis for [a pupil being classified] **the classification of a pupil as "[M]ultiply handicapped."**

7. "Neurologically or perceptually impaired" means impairment in the ability to process information due to physiological, organizational or integrational [internal] dysfunction which is not the result of any other **educationally** handicapping condition [as defined in these regulations. The condition is distinguished by the following] **that is differentiated as follows:**

i. "Neurologically impaired" means a [severe and] specific impairment [, disorder] or dysfunction of the central or peripheral nervous system which adversely affects the education[al performance] of a pupil and is not manifested as any other educationally handicapping condition(s) described in [these regulations;] **this chapter;**

ii. "Perceptually impaired" means [the exhibiting of] a specific learning disability due to a disorder in one or more of the basic psychological processes [involved] in understanding and learning, [and] which affects the ability to listen, think, speak, read, write, spell and [learn arithmetic] **compute** to the extent that special education [and related services are] **is necessary for achievement and successful performance in an educational program.** This definition does not include the manifestation of learning problems which are due primarily to any [of the] other educationally handicapping condition[s] described in [these regulations] **this chapter** or to environmental, cultural, or economic disadvantage.

8. "Orthopedically handicapped" means a condition which, because of malformation, malfunction or loss of bones, muscle, or body tissue[,] necessitates special education[, or] related services, special equipment, or special facilities [to permit functioning of normal learning processes, participation in regular school activities, and maintenance of interpersonal relationships].

9. "Socially maladjusted" means a pattern of [social interaction which is] **behavior** characterized by conflicts which cannot be resolved [adequately with the assistance of] **by authority figures, or behavior that seriously interferes with the well-being or the property of others and is not due to emotional disturbance as defined in [these regulations] this chapter.**

10. "Visually handicapped" means an inability to [use ocular mechanisms to] see within normal limits as [defined by the following] **differentiated below:**

[i. "Blind" means a condition in which visual acuity, with correction, is 20/200 or poorer in the better eye and which necessitates a knowledge and skill in the use of special devices or

techniques, such as Braille, for educational purposes;

ii. "Partially sighted" means a condition in which visual acuity, with correction, is 20/70 or poorer in either eye, or, as a result of some other factors involved in visual functioning, inhibits the effective functioning in a learning environment without special education or related services.]

i. "Blind" means a loss of acuity or field restriction so great that a pupil cannot rely on sight as a means of learning.

ii. "Partially sighted" means a field restriction of less than 40 degrees or a measured visual acuity of 20/70 or less in the better eye with proper correction. A partially sighted pupil is able to use sight as a means of learning.

"Eligible for special education" means the determination by the basic child study team or preschool child study team and the pupil's parent(s) that the pupil requires special education and related services.

"Free appropriate education" means special education [and related services] which conforms to the following criteria:

1. The services are provided at public expense, [under public supervision and direction, and without charge to parents or guardians,] with the exception of incidental fees normally charged to **educationally** nonhandicapped pupils or their parent(s) as [a] part of school-sponsored activities[, such as dances, concerts, dramatic presentations, athletic events, and similar activities] which are not part of the required instructional program;

2. The services meet [standards established by the State Department of Education] **the requirements of this chapter**;

3. The services are provided in [conformity] **conformance** with the pupil's individualized education program and **are in compliance** [conform to the requirements of these regulations] **with this chapter**.

["Health services specialists" means a school nurse, a school nurse practitioner or a school physician.]

"Home instruction" means the provision of individualized instruction to a public or nonpublic school pupil confined to his or her home or to a hospital for a short period of time, as determined by the school physician.

"Individualized education program" means a [written] plan written [representing the cooperative efforts of] jointly by persons familiar with the educational needs of [a] the pupil. [which] This plan establishes the rationale for [a] the pupil's educational program, [and] serves as the basis for program implementation and complies with this chapter.

"Individualized habilitation plan" means the written plan setting forth measurable goals and behaviorally stated objectives and prescribing an integrated program of individually designed activities, experiences and therapies necessary to achieve the stated goals and objectives. Individualized habilitation plans apply to residents of facilities operated by or under contract with the Division of Mental Retardation, Department of Human Services.

"Individual treatment plans" means the written, individualized treatment plan based on assessments of clinical needs containing specific goals that the patient must achieve to attain, maintain, and/or reestablish emotional and/or physical health as well as maximum growth and adaptive capabilities, specific objectives that relate to the goals written in measurable terms, and expected achievement dates; describing the services activities and programs planned for the patient; and specifying the staff members assigned to work with the patients. Individual treatment plans apply to residents of facilities operated by or under contract with the Division of Mental Health and Hospitals, Department of Human Services.

"Native language" means the language [normally used by a person with a limited ability to speak or understand the English language] first acquired by the pupil or the language most often spoken in the pupil's home regardless of the language spoken by the pupil.

"Non-discriminatory assessment" means evaluation procedures

which consider the age, sociocultural background, language and physical abilities of the pupil. [and which] These procedures are selected, administered and interpreted in accordance with standards of good professional practice and [so as] are not [to be racially] sexually, socially or culturally discriminatory.

"Nonpublic school" means an elementary or secondary school within the State, other than a public school, offering education for grades kindergarten through 12, or any combination thereof, wherein any pupil may legally fulfill compulsory school attendance requirements, and which complies with Title VI of the Civil Rights Act of 1964 (P.L. 88-351).

"Nonpublic school pupil" means any child between ages five and 20 who is a resident of the State, enrolled full-time in a nonpublic school. A child who boards at a nonpublic school in a district in which his or her parent(s) are not domiciled shall not be considered a resident of that district. The child shall be considered a resident of the district in which the parent(s) are domiciled.

"Parent(s)" means the natural parent(s), [or] legal guardian(s), foster parent(s), legally responsible agency or surrogate parent(s) [surrogate(s)] of [a] the pupil. Where parents are separated or divorced, "parent" means the person or agency who has legal custody of the pupil, as well as the natural parents of the pupil, provided such parental rights have not been terminated by a court of appropriate jurisdiction.

["Parent surrogate(s)" means an individual or individuals approved by the Department of Education to act on behalf of a pupil whose parents are not available in assuring the pupil's educational rights.]

"Private agency" means any business, enterprise, service or other private legal entity which has the capability, integrity and reliability to perform any or all of the auxiliary services described in N.J.S.A. 18A:46A-1 et seq. and any or all of the examination, classification and corrective services described in N.J.S.A. 18A:46-6, 8, and 19.1 et seq.

"Private school for the handicapped" means any public or private agency, other than a district board of education, that provides special education and related services for educationally handicapped pupils and is approved by the Department of Education according to the provisions of this chapter.

"Pupil" means a person who is or was enrolled in a public school.

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

1. ["Age five" means school age as consistent with established criteria for entrance into kindergarten;] "Between three and five years of age" means preschool age;

2. ["Age 20" means the attainment of the twentieth birthday before July 1. Handicapped pupils attaining age 20 during a school year shall be provided required services for the balance of that school year.] "Age three" means school age as consistent with established criteria for entrance into programs for educationally handicapped preschool pupils. The entry date into programs for educationally handicapped preschool pupils shall be consistent with the entry date of the district board of education for pupils entering kindergarten;

3. "Age five" means school age as consistent with established criteria for entrance into kindergarten;

4. "Age 21" means the attainment of the 21st birthday before July 1. Handicapped pupils attaining age 21 during a school year shall be provided required services for the balance of that school year.

"Referral" means the written policies adopted by the district board of education to identify potentially educationally handicapped pupils, in accordance with this chapter. "Referral" does not include informal reviews or consultations by child study team members or assessments by teachers.

"Rehabilitation facility or sheltered workshop" means an organizational entity which provides individualized, goal-

directed, comprehensive and coordinated training. Such a facility provides employment-oriented services designed to minimize the influences of the handicapping condition(s) and promote the optimal achievement of individual potential.

"Related services" means transportation and such developmental, corrective, social and other supportive services as are [required] needed to [assist a] **enable an educationally** handicapped pupil to benefit from a free [and], appropriate education. [This] These include[s] **the diagnostic services of physicians and other consultant specialists and the intervention services, such as speech correction, physical therapy, occupational therapy, recreation and psychological counseling.** [speech correction, audiology, psychological services, social work services, learning consultant services, physical therapy, occupational therapy, recreation, early identification and assessment of disabilities in pupils, vocational services, counseling services and medical and psychiatric services for diagnostic or evaluation purposes. The term] **"Related services"** also includes, [but is not limited to,] parent counseling [related] **relative** to the education of a pupil and other related services that may be required as a part of the pupil's individualized education program. The term does not include medical treatment or the provision of prosthetic devices for personal use outside of an educational program. [Consistent with professional ethics, school personnel may make suggestions or give advice regarding the need for additional services which are not required by these regulations and which become the option of the parent to follow or not. Such recommendations place no obligation on the school district to provide or fund such services.]

"Residential costs" means the cost of nonmedical care, [and] room and board which [is] **are** necessary to provide special education and related services to an eligible **educationally** handicapped pupil placed in [a] **an approved** residential program.

"Special education" means individually designed, free instructional services that meet the unique educational needs of [a] **an educationally** handicapped pupil as required in [these regulations] **this chapter.**

"**Supplementary instruction**" is instruction provided in addition to the regular instructional program to an **educationally handicapped pupil as described in this chapter.**

"**Surrogate parent(s)**" means a person or persons approved by the Department of Education to act on behalf of a pupil whose parents are not available, to ensure the educational rights of the pupil.

6:28-1.3 [Basic c]Child study teams

(a) **A basic child study team is an interdisciplinary group of appropriately certified persons who identify, evaluate and determine eligibility of pupils for special education and related services. The team also develops and guides the implementation of individualized education programs.**

[(a)](b) A basic child study team shall consist of a school psychologist, a learning disabilities teacher-consultant and a school social worker. All members of the basic child study team shall be employees of the [local] district board of education, have an indentifiable, apportioned time commitment to the local school district, and shall be available during the hours pupils are in attendance].

(c) **A preschool child study team is an interdisciplinary group of appropriately certified persons who are trained in assessment procedures and program planning for preschool children.**

(d) **The preschool child study team shall be assembled according to the needs of the child as presented through screening and planning procedures.**

(e) **The preschool child study team shall consist of at least two members who have participated in the assessment planning procedures and other professionals as indicated by the screening results. Additional members of the preschool child study team may be any of the following:**

1. School social worker;

2. School psychologist;

3. Learning disabilities teacher-consultant;

4. Speech correctionist;

5. Teacher of a preschool handicapped class;

6. Occupational therapist;

7. Physical therapist;

8. School nurse;

9. School physician.

[(b)] (f) Each [local public school] district **board of education, independently or through joint agreements,** shall employ [basic] child study teams in numbers sufficient to ensure provision of required services pursuant to [these regulations] **this chapter.**

[(c)] A basic child study team shall act in consultation with a school physician and any other professionals (consultant) deemed appropriate by the basic child study or by the chief school administrator.

(d) The child study team represents a multi-disciplinary approach to identifying, evaluating, and planning suitable educational programs that are appropriate for children experiencing difficulty in learning.

(e) It shall be the responsibility of the basic child study team to determine pupil eligibility for special education and related services. The basic child study team shall coordinate the development of an individualized education program for each educationally handicapped pupil in accordance with the requirements of these regulations.

(f) Prior approval by the Office of the County Superintendent of Schools and the Bureau of Special Education and Pupil Personnel Services shall be obtained for the purchase by any local school district of services of eligible, approved diagnostic clinics; agencies; or professionals in private practice representing a basic child study team discipline to supplement members of the basic child study team. When such approval is granted to a local school district for the purchase of external diagnostic or professional services, the local school district's basic child study team shall develop and coordinate the appropriate individualized education program.

(g) Each local public school district shall employ speech correctionists in numbers sufficient to ensure provision of required services pursuant to these regulations.

(h) A local public school district may contract for purchase of physical and occupational therapy diagnostic services with approved clinics.

(i) A school physician may determine eligibility for educational services for pupils confined to their homes or hospitals by a physician.

(j) A speech correctionist may determine pupil eligibility for speech correction services that are not severe enough to warrant referral to a basic child study team.]

(g) **The basic child study team shall be available to consult with the general education staff regarding techniques, materials and programs for pupils experiencing difficulty in learning. Services include but are not limited to the following:**

1. Consultation with school staff and parents;

2. Diagnostic assessment of pupils;

3. Designing, implementing, and monitoring techniques to prevent and/or remediate educational difficulties.

(h) **The basic child study team shall determine pupil eligibility for special education and related services through the evaluation procedures prescribed in this chapter and shall coordinate the development of a written individualized education program for each educationally handicapped pupil.**

(i) **The basic child study team shall act in consultation with a school physician and any other professional staff member(s) or consultant(s) deemed appropriate by the basic child study team, the parent(s) or the chief school administrator.**

(j) **A school physician shall determine eligibility for educational services for pupils confined to their homes or to a hospital by a physician.**

(k) Each district board of education shall include a school nurse on the child study team when determining eligibility and developing the individualized education program for physically handicapped children.

(l) Each district board of education shall employ speech correctionists in numbers sufficient to ensure provision of required services pursuant to this chapter. The basic child study team shall include a speech correctionist for determining eligibility and developing an individualized education program for pupils who have a severe speech or language disorder.

(m) A speech correctionist shall determine pupil eligibility for speech correction services for pupils whose speech impairment is not severe enough to warrant referral to a child study team.

(n) A district board of education shall notify, in writing, the Department of Education when diagnostic services are purchased. The purchase of such services from diagnostic clinics, agencies or professionals in private practice that have been approved by the Department of Education, shall not exceed six months and must be provided in accordance with the requirements of this chapter. The members of the child study team of the local school district shall accept or reject, in writing, all or a part of the report(s) and classification(s) made by the external child study team. Upon written acceptance of external reports, the child study team of the local school district shall develop and coordinate the individualized education program.

(o) A district board of education may contract with clinics, agencies or professionals in private practice that have been approved by the Department of Education pursuant to N.J.A.C. 6:28-7 for purchase of related services not provided by the local school district.

6:28-1.4 Identification

(a) Each [local] district board of education shall adopt written procedures for [locating] identifying those pupils who reside within the local school district[,] who may be educationally handicapped and who are not receiving [required] a free [and], appropriate [services at public expense] education as required by [these regulations] this chapter. [(b)]The procedures shall be used [annually] to identify pupils who may be experiencing [difficulties of a] physical, emotional, [intellectual] cognitive, or social [nature to the extent that they must be referred] difficulties which require referral to a [basic] child study team for possible [classification] determination as educationally handicapped[;]. H[h]owever, no pupil shall be referred to as educationally handicapped before [he/she has] having been formally [classified as being handicapped] determined to be eligible for special education programs and related services by an appropriate child study team.

[(c)](b) The identification procedures shall provide for participation of instructional, administrative and pupil personnel services staff of the local school district, parents, [and] other professionals [or] and agencies concerned with the welfare of pupils.

[(d)](c) A pupil new to a local school district and identified as being potentially educationally handicapped, but not classified by the school district from which the pupil came, shall be placed in a regular public school program. If the chief school administrator, after consultation with the basic child study team, determines that placement of the pupil may do serious harm to the [child] pupil or to others [pupils], the [child] pupil may be removed from an educational program for a period not to exceed 30 calendar days pending evaluation and classification[;]. [however, and] An educational program [must] shall be provided during this period [of time].

[(e)](d) [The Division of Youth and Family Services may identify and classify a pupil under its care, in accordance with the requirements of these regulations, when the determination of the local school district responsible for the pupil's education is unclear, and the determination of responsibility will cause a delay in the pupil's receiving required services under these regulations. Where

a local school district's responsibility for a pupil under the care of the Division of Youth and Family Services is clear, the local school district shall accept the identification of a pupil by the Division and shall refer the pupil to a basic child study team in accordance with the requirements of these regulations.] When the Division of Youth and Family Services, Department of Human Services, identifies a potentially educationally handicapped pupil for whom a local school district is responsible, that district shall accept the pupil's identification by the Division of Youth and Family Services and shall refer the pupil to its child study team in accordance with this subchapter. When it is unclear which local school district is responsible for a pupil under the care of the Division of Youth and Family Services, and the determination of responsibility will cause a delay in providing required services to the pupil, the Division of Youth and Family Services shall evaluate and classify the pupil and provide special education services in accordance with this chapter.

(e) Each district board of education shall adopt written procedures for locating those children within its jurisdiction who are eligible for preschool special education programs and services.

(f) The district board of education shall employ a variety of outreach activities to disseminate information to parents and the community regarding services available for educationally handicapped children three through five years old. Each district board of education shall provide, upon request, information regarding services available through other State, county and local agencies to parents of potentially educationally handicapped children below the age of three.

6:28-1.5 Referral

(a) [Pupils identified as being potentially educationally handicapped and considered to require services beyond those available within general education shall be referred to the basic child study team within 7 calendar days after parental approval has been granted. Referral shall be in conformance with procedures adopted by the local board of education.]

Prior to referral of a pupil to a basic child study team for determination of an educationally handicapping condition, interventions in the regular public school program to alleviate educational problems shall be provided to the pupil, and written documentation shall be made of their effect. Based upon this documentation, the pupil's teacher in consultation with child study team member(s) shall determine whether or not a referral shall be initiated. Parents shall be informed of the interventions used and their documentation prior to referral.

(b)[A] The parent(s) of a pupil being considered for referral to [the] a basic child study team shall be provided in writing with the following information by the chief school administrator or [his/her] designee:

1. The reason(s) for referral;
2. Notice of parental rights to due process contained in [these regulations] this chapter;
3. A description of the procedures that [may] will be used during the evaluation process of the pupil by the child study team and which may include consultation and assessment by other specialists.

(c) Information provided to the parent(s) of a pupil considered for referral shall be:

1. Written in language understandable to the general public;
2. Written in the native language of the home unless this requirement would place an unreasonable burden upon the local school district. In such cases, other means of communication shall be used which ensure that the parent(s) fully understands the English language transcription of information;
3. Documented as received by the parent(s);
4. Consistent with the [requirements described in the] procedures for due process contained in [these regulations] this chapter.

(d) Pupils identified as being potentially educationally

handicapped and considered to require services beyond those available within the regular public school program shall be referred to the basic child study team in conformance with procedures adopted by the district board of education. Referral to the basic child study team shall take place within seven calendar days after parental approval has been received.

[(d)](e) For each referred pupil, the basic child study team shall make a preliminary determination of the need for a comprehensive evaluation pursuant to the requirements of this chapter [these regulations].

[(e)](f) A pupil shall be referred to the basic child study team to determine if the pupil is eligible for the services described in [these regulations] this chapter as a prerequisite to any district board of education action on expulsion from the public schools.

(g) The referral process for children ages three to five shall consist of the following:

1. A child who has received services in an approved early intervention program shall be eligible for services in a program for educationally handicapped preschool children consistent with the child's transition plan. The district board of education shall have 30 calendar days to review the transition plan and confirm the need for services.

2. Each district board of education, upon written request of the parent(s) shall provide a screening procedure to identify resident children, ages three to five, who require and would benefit from special education services that might prevent their handicaps from becoming more debilitating. Screening shall be conducted within 30 calendar days of the date of the request.

3. Following a written request for screening, the chief school administrator or designee shall appoint a member of the basic child study team to function as case manager. The case manager shall guide the identification process from screening to completion of the individualized education program.

i. The screening shall include but is not limited to the following areas of development:

- (1) Motor;
- (2) Communication;
- (3) Cognitive;
- (4) Social-emotional;
- (5) Vision;
- (6) Hearing.

ii. Screening shall be conducted by at least two professionals, one of whom is a member of the basic child study team and one of whom is a speech correctionist. Additional screeners shall be selected from the following: teacher of a preschool handicapped class, physical therapist, occupational therapist, school nurse, school physician, audiologist or other member of the child study team.

iii. Parents shall be encouraged to participate in screening procedures and to provide necessary information.

iv. Existing medical, social, psychological and developmental information shall be incorporated into the screening process.

v. A written summary shall be developed from each of the areas screened, including specific recommendations for follow-up. Following the screening, staff shall meet with parents to discuss the results. This shall occur in the dominant language of a family whose native language is other than English, or through provision of a qualified interpreter for parents who are deaf.

4. At the completion of screening, the following options shall be considered:

i. Placement into a special education program when the child clearly meets the eligibility criteria pursuant to N.J.A.C. 6:28-1.7(i) through evidence of an existing, identifiable handicapping condition. A comprehensive assessment and individualized education program shall be completed within 60 calendar days from the date of placement.

ii. Administration of a comprehensive assessment and eligibility determination. This shall be completed within 60

calendar days from the date of referral.

iii. Temporary diagnostic placement in a program for educationally handicapped preschool pupils for observational assessment. This shall result in obtaining necessary information to determine eligibility. A child so placed shall not be registered or enrolled until declared eligible to receive services in special education programs for educationally handicapped preschool pupils. Temporary placement to obtain diagnostic information shall not exceed 30 calendar days. If the child is determined to be eligible, the assessment leading to classification shall be completed within 60 calendar days from the date of referral.

iv. A previous comprehensive assessment conducted by an agency approved by the Department of Education and dated within one calendar year of the referral shall be reviewed by the preschool child study team and used to determine eligibility.

6:28-1.6 Comprehensive evaluation

(a) Following identification and referral of a pupil age five to 21, [a] the basic child study team shall determine the need for a comprehensive evaluation [and shall proceed, if necessary, with the required evaluations to determine if the pupil is educationally handicapped and in need of special education and related services.] to identify the following:

1. Specific information necessary to establish eligibility for special education and related services;
2. Evaluation procedures to obtain the necessary information;
3. Child study team members who will collect the required information;
4. Pupil's communication skills and dominance in English and the native language.

(b) [A comprehensive] All evaluations leading to a decision [on classification of a pupil] to determine a pupil's eligibility for special education and related services shall be completed within 60 calendar days from the date of referral to the basic child study team. [the date a pupil has been referred to a basic child study team, unless] All such evaluations shall have the written approval of the pupil's parent(s). A member of the basic child study team shall actively seek parental approval to conduct the evaluations. The district board of education may evoke due process procedures pursuant to N.J.A.C. 6:28-1.8 to obtain permission to begin the evaluations on behalf of the referred pupil. An extension [extended by the] of this timeline shall be reported to the [chief school administrator] Department of Education. [when t] The [basic child study team] chief school administrator or designee shall present[s] written evidence that reasonable extenuating circumstances relating to the individual pupil preclude completion [accomplishment] of the evaluations within the required time frame [this requirement]. [Such exceptions shall be reported to the Office of the County Superintendent of Schools.]

(c) All evaluations specified [herein] in this chapter shall be made on an individual basis and [whenever possible] shall be conducted in the native language of the pupil. Information from group tests, if used, shall be supplementary to individual evaluations. In all instances evaluations shall be non-discriminatory and consideration shall be given [also] to the pupil's sociocultural background and adaptive behavior in home, [and] school and community. A determination of the pupil's communication skills and dominance in English and the native language shall be completed prior to any other evaluation procedures.

[(d)] All comprehensive examinations shall include a thorough health appraisal, psychological examination, an educational evaluation and a social assessment.]

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

[(f)] Examination results and findings of other specialties shall be included in the comprehensive evaluation where appropriate or where designated in these regulations.]

[(g)](e) A comprehensive evaluation for pupils age five to 21 shall consist of the following:

1. A **comprehensive** health appraisal shall be performed by a school physician[, or a school nurse practitioner] employed by the [local] **district** board of education. The comprehensive health appraisal] and shall include, but not be limited to, an assessment of prenatal, perinatal, postnatal, developmental and early childhood illnesses and injuries and a review of health screenings[;]. [an examination of] **The school physician shall examine** the pupil, including all body systems, [with] **and write** a summary indicating the [educational relevance of the findings and the impact] **effect** of any current health [management] **problem** on the pupil's learning processes[; if a]. **If the parent(s) [or guardian]** of the pupil employs a private physician, a report of [such] **the physical examination shall be completed on a form developed by the school physician** [which is acceptable to the school physician shall suffice. The school physician shall be responsible for reviewing and approving the examination report submitted by the school nurse practitioner or the private physician;]. **The school nurse shall review and summarize all the health information of an educationally handicapped pupil and transmit it to the child study team.**

2. A psychological examination shall be performed by a school psychologist employed by the [local] **district** board of education. **The psychological examination shall include observation of the pupil in the classroom and other settings and teacher conferences.** The examination **also** shall include an assessment of the **current** [intellectual] **cognitive**, social, adaptive and emotional [development] **status** of the pupil.

3. An educational evaluation shall be [made] **performed** by a learning disabilities teacher-consultant employed by the [local] **district** board of education. It shall include observation of the pupil **in an academic setting**, review of the pupil's educational history, conferences with the pupil's teacher(s), and an evaluation and [an] analysis of the pupil's academic performance and learning characteristics.

4. A social assessment shall be made by a social worker employed by the [local] **district** board of education. The [study] **social assessment** shall include observation of and communication with the pupil[,]. **It shall also include an evaluation of the pupil's adaptive behavior**, [and an evaluation of family, school and community factors which contribute to the pupil's adjustment within the educational setting] **emotional development, social functioning, and information regarding the family, school and community factors which contribute to the pupil's learning and behavioral patterns within the educational setting.**

5. **The basic child study team shall include pertinent information from certified school personnel making the referral when rendering evaluation and eligibility decisions.**

(f) **Examination results and findings of other specialists shall be included in the comprehensive evaluation where appropriate or where required in this chapter.**

[(h)](g) In addition to evaluations conducted by the school physician and the basic child study team, a determination of the following handicapping conditions requires the evaluations of [the following] specialists:

1. "Auditorily handicapped": [A]a specialist qualified in the field of audiology; **a speech and language evaluation by a certified speech correctionist;**

2. "Chronically ill": [T]the school physician may [make] **perform** the medical examination or may accept the medical report of another [qualified] physician. The school nurse shall assist in the accumulation of the data necessary to make the evaluation;

3. "Communication handicapped": [A]a certified speech correctionist;

4. "Emotionally disturbed": [A]a psychiatrist trained or experienced in working with children;

5. "Eligible for day training": [A]a curriculum consultant from the Division of Mental Retardation, Department of Human Services;

6. "Multiply handicapped": [A]all specialists required in this subsection for the types of handicapping conditions [which

constitute the] **being considered in the** determination of [this category] **eligibility for special education;**

7. "Neurologically impaired": [A]any physician **with training in pediatric neurodevelopmental assessment and/or** qualified in the field of neurology;

8. "Orthopedically handicapped": [T]the school physician or an [orthopedic specialist approved by him/her] **orthopedist;**

9. "Perceptually impaired": [S]specialist(s) recommended by a basic child study team or a school physician when, in the judgment of the **basic** child study team or the school physician, an examination by such specialist(s) would provide information necessary for diagnostic purposes or **for** the development of an individualized education program;

10. "Socially maladjusted": [A]a psychiatrist trained or experienced in working with children;

11. "Visually handicapped": [A]a [person] **specialist** legally qualified to determine visual disability. [Whenever possible a member of the Commission for the Blind and Visually Impaired pursuant to N.J.S.A. 30:6-1 et seq. shall act as a consultant in developing the educational program.] **Visually handicapped pupils eligible for special education** [Children classified as visually handicapped] shall be reported to the Commission for the Blind and Visually Impaired, the [Office of the C]county [S]superintendent of [S]schools, and the [Bureau] **Department of [Special] Education [and Pupil Personnel Services].**

(h) **In subsequent evaluations to determine a pupil's eligibility for special education, the evaluation by specialists is at the discretion of the basic child study team.**

(i) When an evaluation is completed, **the basic child study team, [and does not result in classification,] other professionals and the parents shall meet to determine whether the pupil is eligible for special education.** [t]The parent(s) [or] **and** referring agent shall be [notified in writing of the determination of the basic child study team and] **given a written summary of all decisions and any recommended course(s) of action.**

(j) If the reports and evaluations of [an] **a Department of Education** approved clinic, agency or professional in private practice are accepted by members of the [basic] child study team, such acceptance shall be noted in writing and shall become part of the report(s) of the [basic] child study team member(s).

(k) A [local public school] **district board of education** may contract **with approved clinics or agencies** for purchase of physical and occupational therapy diagnostic services [with approved clinics].

(l) The requirements for evaluation[s by a school psychologist, a learning disabilities teacher-consultant and a school social worker] **by the basic child study team** do not apply to a pupil[s] confined [to their] at home[s] or to a hospital[s] by a physician and to a pupil[s] with a mild speech articulation problem[s] when the nature of the problem is not severe enough to warrant a comprehensive evaluation by a basic child study team.

(m) [A] **The parent(s)** may request an independent [educational] **child study team** evaluation if [he/she disagrees] **there is disagreement** with the evaluation obtained by a [school] **district board of education.** Such independent [educational] **child study team** evaluations shall be provided at no cost to the parent(s) by the [school] **district board of education** unless the [school] **district board of education** initiates a hearing to show that its evaluation is appropriate and a final determination to that effect is made following the hearing. In such event, the parent(s) may secure an independent **child study team** evaluation at [his/her] **the expense of the parent(s).**

(n) Any **independent child study team** evaluation secured at private expense shall be considered by the [school] **district basic child study team** in making any decisions regarding [classification,] **eligibility for special education and related services,** an individualized education program and appropriate placement. Such **independent child study team** evaluations may be presented as evidence at due process hearings.

(o) Any independent **child study team** evaluation conducted at public expense shall utilize the same criteria [which are] used in evaluations conducted by [school] **district basic child study teams** as required by [these regulations] **this chapter**.

(p) A [comprehensive] reevaluation **to determine the status of each [classified] educationally handicapped pupil age five to 21** shall be conducted at least every three years or more frequently, if conditions warrant, upon the request of the pupil's parent(s), teachers(s) or other appropriate person(s) who share responsibility for the pupil's education or care. [In addition, when evidence is presented to indicate that a classification may no longer be appropriate, a comprehensive evaluation shall be conducted upon presentation of such evidence to a basic child study team. The comprehensive evaluation shall consist of an evaluation of each component which was used to determine the classification of the pupil. It shall include medical examinations and assessments necessary to determine the current condition of the pupil and to substantiate any recommendation made regarding the pupil's status. The classification, if any, shall be determined by the same basic child study team which observed, tested and assessed the pupil, unless the team is no longer available to the school district.] **The basic child study team shall determine whether a comprehensive evaluation is needed based upon demonstrated pupil progress in meeting the goals and objectives of the individualized education program. When the basic child study team determines that a comprehensive evaluation is not necessary, it shall designate which child study team member(s) and/or other specialist(s) shall conduct the appropriate reevaluation(s). The basic child study team shall notify the parent(s) of any reevaluation in writing.**

(q) When a change in classification is being considered, a comprehensive evaluation shall be conducted by the basic child study team.

(r) The basic child study team with parental approval shall terminate a pupil's eligibility when sufficient evaluation data are presented to indicate that a pupil no longer requires special education, the basic child study team shall terminate the pupil's eligibility.

(s) Any decision by a district board of education child study team concerning evaluation shall include the full participation of the parents as prescribed in this chapter.

(t) A comprehensive evaluation for children ages three to five shall consist of the following:

1. **Based on the results of the screening procedures for educationally handicapped preschool pupils, a case manager, appointed by the chief school administrator, shall designate members of the preschool child study team to plan the comprehensive evaluation for each child.**

i. Assessment shall be a process of comprehensive evaluation of all areas of growth, development and adaptive behavior. Assessment planning for individual children shall take place prior to initiation of formal evaluation procedures.

ii. Assessment planning shall be conducted by at least two appropriately certified professionals, one of whom shall be a member of the basic child study team.

iii. Other assessment planners shall be one or more of the following:

- (1) School social worker;
- (2) School psychologist;
- (3) Learning disabilities teacher-consultant;
- (4) Speech correctionist;
- (5) Teacher of a preschool handicapped class;
- (6) Occupational therapist;
- (7) Physical therapist.

iv. It shall be the responsibility of the assessment planners to:

(1) Identify the type of information to be obtained through the evaluation procedures in order to determine eligibility and to plan the child's program;

(2) Determine the activities necessary to obtain the required

information;

(3) Determine composition of the preschool child study team that shall be assigned to collect the required information.

v. Additional special evaluations shall be obtained when indicated through referral, screening or assessment findings. Such evaluations may include:

- (1) Neurological;
- (2) Ophthalmological;
- (3) Audiological;
- (4) Psychiatric;
- (5) Others as determined by the preschool child study team.

vi. A health assessment conducted by a pediatrician or physician trained in neurodevelopmental assessment shall be obtained for each child prior to evaluation.

vii. The preschool child study team shall evaluate the following areas as indicated through screening, referral or existing information:

- (1) Gross motor;
- (2) Fine motor;
- (3) Sensory;
- (4) Communication;
- (5) Cognitive;
- (6) Social-emotional;
- (7) Family dynamics.

viii. Evaluation by each preschool child study team member shall consist of but not be limited to use of at least two of the following procedures:

- (1) Observational assessment;
- (2) Standardized testing;
- (3) Developmental scale;
- (4) Adaptive behavior measure;
- (5) Skill inventory.

ix. Evaluation procedures shall be non-discriminatory and appropriate to the developmental level of the child. Information about the child reported by parents shall supplement all appraisals of the child. Parents shall be encouraged to participate in the evaluation procedures.

x. The assessment planners shall incorporate previously gathered information about the child at the time of the assessment.

xi. Upon completion of the required evaluations, the preschool child study team shall determine if the planning questions have been answered.

xii. A collaborative assessment summary based on individual preschool child study team member reports shall be written by the case manager describing the child's current developmental status and functional skill levels.

xiii. The assessment summary shall include a statement of the area(s) of impairment, such as physical, behavioral, cognitive or communication; the degree of impairment, such as moderate, severe or profound and the determination of eligibility for a program for educationally handicapped preschool pupils.

xiv. The meeting to determine eligibility for preschool special education and related services shall be conducted by the case manager with the participation of parent(s) and appropriate professional(s).

7. A transition plan for each educationally handicapped preschool pupil shall be developed upon attainment of kindergarten age. The transition plan shall include:

i. A comprehensive evaluation by the district's basic child study team in accordance with the requirements of this chapter;

ii. Provisions for informing parent(s) about evaluation results and range of service options available;

iii. Provisions for parental participation in developing the transition plan;

iv. Provisions for sharing pertinent pupil information between the sending and receiving teachers.

[6:28-1.7 Classification]

(a) Any pupil possessing a handicapping condition which requires special education and related services under the provisions of these regulations shall be appropriately classified. This classification shall be established during a conference attended by the basic child study team and other appropriate professionals. Professional personnel contributing to the classification shall give evidence of having seen the pupil. A school health services specialist shall be available to provide health information and to participate in the discussion of the health appraisal and any findings by other medical specialists.

(b) Categories of classification shall be consistent with definitions of educationally handicapping conditions described in these regulations and shall consist of the following:

1. Auditorily handicapped:
 - i. Deaf;
 - ii. Hard of hearing.
2. Chronically ill:
 - i. Chronically ill;
 - ii. Eligible for home instruction.
3. Communication handicapped:
 - i. Communication handicapped;
 - ii. Eligible for speech correction services.
4. Emotionally disturbed;
5. Mentally retarded:
 - i. Educable;
 - ii. Trainable;
 - iii. Eligible for day training.
6. Multiply handicapped;
7. Neurologically or perceptually impaired:
 - i. Neurologically impaired;
 - ii. Perceptually impaired.
8. Orthopedically handicapped;
9. Socially maladjusted;
10. Visually handicapped:
 - i. Blind;
 - ii. Partially sighted.

(c) A parent of a pupil classified as educationally handicapped shall annually have available to them copies of N.J.S.A. 18A:46-1 et seq., N.J.A.C. 6:28-1.1 et seq. and N.J.A.C. 6:3-2.1 to 2.8. Such copies shall be provided to parents by the local school district upon request.

(d) All classification procedures are subject to review and approval by the Office of the County of Superintendents of Schools and the Bureau of Special Education and Pupil Personnel Services State Department of Education.

(e) The appropriate classification shall be used as one of the bases for planning a pupil's individualized education program.

(f) A school physician may classify pupils as eligible for home instruction when they are confined to homes or hospitals, and a speech correctionist may classify pupils as eligible for speech correction services, when the nature of the problem is not severe enough to warrant comprehensive evaluations by the basic child study team. Such classifications shall be reported to the basic child study team and are subject to the requirements of this section with the exception of participation by a basic child study team. Notification shall be made to a basic child study team by a person designated by the chief school administrator when a pupil's confinement to a home or hospital exceeds 30 calendar days.

(g) The classification of an educationally handicapped pupil shall be valid for a period not to exceed three years.]

6:28-1.7 Individualized education program

(a) The individualized education program for each educationally handicapped pupil shall consist of a basic plan section and an instructional guide.

(b) The basic plan section of the individualized education program shall be written within 30 calendar days of the child study team's evaluation and determination that the pupil is eligible for special education and related services.

(c) The basic plan section of the individualized education program for educationally handicapped pupils ages five to 21 shall be developed at a meeting attended by the child study team, the parent(s), teacher(s) having knowledge of the pupil's educational performance and the pupil, when appropriate. Administrators, school counselors, speech correctionists, nurses and other individuals may be included in the meeting. Prior to the meeting regarding the development of the basic plan section, the chief school administrator or designee shall provide written notification to the parent(s) indicating its purpose, time, location and participants. For educationally handicapped preschool children the basic plan shall be developed at a meeting attended by the case manager, a member of the preschool child study team, teacher, parent(s) and others as appropriate. The findings of other specialists shall be included in the development of the basic plan.

(d) The basic plan section of the individualized education program for educationally handicapped pupils ages five to 21 shall include, but not be limited to:

1. A statement of the child study team's decision which determines pupil eligibility for special education and related services;
2. A statement of current educational status which describes the pupil's present levels of educational performance and adaptive behavior, including academic achievement, cognitive functioning, personal and social development, physical and health status, and where appropriate, language proficiency, communication style, prevocational, vocational and self-help skills;
3. A statement of annual goals, based upon the current educational status, which describes the educational performance expected to be achieved under the pupil's individualized education program. Annual goals shall be related to the special education and/or regular education curriculum;
4. A statement of objectives, which shall be specific measurable steps between the present level of educational performance and the annual goals;
5. A description of the pupils's educational program which includes:
 - i. A rationale for the type of educational program and placement selected;
 - ii. An explanation of why the placement is the least restrictive environment appropriate for the pupil;
 - iii. A description of the extent to which the pupil will participate in regular educational programs, and appropriate modifications thereof;
 - iv. A description of exemptions from regular education program options;
 - v. A statement specifying the language to be used for instruction, if other than English;
 - vi. A statement which describes the specific related services, including the date when the required services will begin and the length of time services will be given;
 - vii. The procedure to determine if the pupil's goals and objectives are being met.

(e) The basic plan for each educationally handicapped preschool child shall include, but not be limited to, the following:

1. Determination of eligibility;
2. Child's current developmental status by area, for example, motor, communication, cognitive, social-emotional, adaptive behavior, health status and self-help skills;
3. Annual goals and intermediate objectives;
4. Specific education program and related services along with the projected dates for their initiation and duration. These shall be presented in the dominant language of the family;
5. Specific techniques and methods to be used in the child's special education program;

6. Appropriate objectives and evaluation procedures and schedules for determining; at least on a semi-annual basis, whether the instructional and related services' objectives are being achieved.

(f) Any pupil possessing an educationally handicapping condition which requires special education and related services under the provisions of this chapter shall be appropriately classified. This classification shall be established during the individualized education program conference and included in the basic plan.

1. Classification shall be consistent with the definitions of educationally handicapping conditions described in this chapter and shall consist of the following:

i. Auditorily handicapped;

(1) Deaf;

(2) Hard of hearing;

ii. Chronically ill;

(1) Chronically ill;

(2) Eligible for home instruction;

iii. Communication handicapped;

(1) Communication handicapped;

(2) Eligible for speech correction services;

iv. Emotionally disturbed;

v. Mentally retarded;

(1) Educable;

(2) Trainable;

(3) Eligible for day training;

vi. Multiply handicapped;

vii. Neurologically or perceptually impaired;

(1) Neurologically impaired;

(2) Perceptually impaired;

viii. Orthopedically handicapped;

ix. Preschool handicapped;

x. Socially maladjusted;

xi. Visually handicapped;

(1) Blind;

(2) Partially sighted.

(g) A school physician shall determine a pupil's eligibility for home instruction when a pupil is temporarily confined at home or to a hospital as a result of accident or illness. Written notification shall be made to the child study team by a person designated by the chief school administrator when a pupil's confinement to home or hospital exceeds 30 calendar days. The child study team shall review the pupil's program and determine if further intervention is necessary.

(h) A speech correctionist shall determine a pupil's eligibility for speech correction services when the pupil's problem is not severe enough to warrant comprehensive evaluation by the basic child study team.

(i) A child shall be eligible for preschool special education programs and related services when the child is determined by the preschool child study team to be preschool handicapped, pursuant to either of the following criteria:

1. The child has a condition that impairs or has a high predictability of impairing normal attainment of developmental milestones. Such conditions include, but are not limited to, hearing or vision impairments, autism, cerebral palsy, cleft palate, spina bifida, Down's syndrome or orthopedic impairments.

2. The child has measurable developmental delay(s) or disordered behavior, verified by the preschool child study team pursuant to the requirements of this chapter, showing the child to be functioning at least 25 percent below his or her chronological age in two or more of the following developmental areas:

i. Motor;

ii. Communication;

iii. Cognition;

iv. Social-emotional.

(j) A child shall not be eligible for preschool special education programs and related services when the child has been determined to have mild articulation problems.

(k) Following the development of the basic plan section, a member of the basic child study team shall be designated to coordinate the development of the instructional guide.

(l) The instructional guide shall be developed by the teacher(s) responsible for implementing the pupil's instructional program. A basic child study team member(s) shall assist the teacher(s) in developing the pupil's instructional guide. The parent(s) of an educationally handicapped pupil may participate in the development of the instructional guide.

(m) The instructional guide shall be completed within 20 calendar days after placement has been implemented.

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

1. A planned schedule of time the pupil will be served by specialists, special education teachers, bilingual or English as a second language teachers and regular education teachers;

2. Instructional strategies fitted to the pupil's learning style;

3. Techniques and activities designed to support the personal and social development of the pupil;

4. Any special instructional media and materials needed for learning.

(o) The child study team shall be responsible for coordination, monitoring and evaluation of the individualized education program.

(p) The chief school administrator or designee shall be responsible for the implementation of the individualized education program.

(q) Annually, or more often if necessary, the child study team shall review and revise the individualized education program at a meeting with the pupil's parent(s). For educationally handicapped preschool pupils, the individualized educational program shall be reviewed and revised at least twice a year or more frequently according to the extent of the handicapping condition. The meeting to review the individualized education program shall include the appropriate member(s) of the child study team, the teacher(s) having knowledge of the pupil's educational performance and the pupil, when appropriate. Administrators, school counselors, speech correctionists and other individuals may be included in the meeting.

(r) Each district board of education shall ensure that the parent(s) are afforded the opportunity to participate in the development of the individualized education program, including the initial and annual conferences at a mutually-agreed upon time and place consistent with policies developed and approved by the district board of education for this purpose.

1. If the parent(s) cannot attend the conferences, the chief school administrator or designee shall ensure parental participation, including the use of individual or conference telephone calls. Records shall be maintained of all attempts to ensure parental participation.

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

(t) A copy of the individualized education program including classification of the pupil shall be signed by members of the child study team and shall be provided to the parent(s) in their native language, unless it can be demonstrated that this requirement would place an unreasonable burden upon the district board of education. In such cases, other means of communication may be used to ensure that the parent(s) fully understands the English language transcription of information.

(u) The basic plan section of the individualized education program shall be implemented within 30 school days after receipt of written consent from the pupil's parent(s) or upon completion of due process procedures. If parental consent for

the initial program placement is withheld, the district board of education may appeal the parental refusal in accordance with the procedures for due process pursuant to N.J.A.C. 6:28-1.8.

(v) The requirements of this section shall apply to pupils who have been determined eligible for special education and related services and classified by school physicians or speech correctionists. The individualized education program shall be developed at a meeting attended by the school physician or speech correctionist, the parent(s) and when appropriate, a member(s) of the basic child study team. The referring certified school personnel and the school principal or designee may participate in the meeting. A school nurse shall attend the meeting on behalf of the school physician if so designated by the school physician.

(w) Consistent with professional practice, school personnel may make suggestions or give advice regarding the need for additional services which are not required by this chapter. Such recommendations place no obligation on the district board of education to provide or fund such services.

(x) The parent(s) of an educationally handicapped pupil shall be allowed to use an audio-tape recorder during the individualized education program conferences.

(y) The parent(s) of a pupil determined eligible for special education and related services shall be given copies of N.J.S.A. 18A:46-1 et seq., N.J.A.C. 6:28 and N.J.A.C. 6:3-2 (Pupil Records).

[6:28-1.8 Individualized education program]

(a) An individualized education program shall be written for each pupil classified as educationally handicapped in accordance with the requirements of these regulations and procedures established by the Bureau of Special Education and Pupil Personnel Services.

(b) The individualized education program for each educationally handicapped pupil shall consist of a basic plan section and an instructional guide necessary to assist the teacher(s) in planning and providing ongoing educational activities.

(c) The basic plan section of the individualized education program shall be developed at a meeting attended by the basic child study team, one or both parent(s) teacher(s) having knowledge of the pupil's educational performance, and the pupil, where appropriate. Administrators, school counselors, speech correctionists, and other individuals, in person or via telephone, may be included at the discretion of the parent(s) or the local school district.

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

1. Statements of findings which describe the pupil's present levels of educational performance including academic achievement, intellectual functioning, personal and social adjustment, physical and health status, and where appropriate, prevocational, vocational and self-help skills;

2. A statement of the team's decision which determines pupil eligibility for special education and related services;

3. A statement of annual goals, which describes the educational performance expected to be achieved by the end of the school year under the pupil's individualized education program;

4. A statement of objectives, which shall be specific, intermediate steps between the present level of educational performance and the annual goals;

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

i. A statement explaining the rationale for the type of educational program and placement;

ii. An explanation of how the placement is the least restrictive environment appropriate for the pupil;

iii. A description of the extent to which the pupil will participate in regular educational programs, if appropriate.

6. A statement describing the specific related services necessary to meet the unique needs of the pupil which also includes:

i. The date when required services will begin;

ii. The length of time the services will be given.

7. An evaluation procedure and schedule shall be developed to determine whether the program objectives are being achieved;

8. A statement describing each child study team member's role, if any, for implementing the various aspects of the individualized education program.

(e) Subsequent to the development of the basic plan section, a designated member(s) of the basic child study team shall coordinate the development of the necessary instructional guide in cooperation with the staff member(s) responsible for each area of the pupil's individualized education program. The chief school administrator or his/her designee shall be responsible for the implementation of the individualized education program.

1. The instructional guide shall include where appropriate, but need not be limited to:

i. A planned schedule of the time the pupil will be served by specialists, special education teachers, and regular education teachers;

ii. Instructional strategies geared to the pupil's learning style;

iii. Techniques and activities designed to support the personal-social development of the pupil;

iv. Any special instructional media and materials which are needed.

(f) Annually, or more often if necessary, the local school district shall review and revise the appropriate individualized education program at a meeting with one or both of the pupil's parent(s). This meeting shall include the appropriate member(s) of the basic child study team; the teacher(s) having knowledge of the pupil's educational performance; and the pupil, where appropriate. Administrators, school counselors, speech correctionist and other individuals, in person or via telephone may be included at the discretion of the parent(s) or the local school district.

(g) Each local school district shall ensure that the parent(s) and educators of handicapped pupil are afforded the opportunity to participate in the development of the individualized education program, including scheduling the meeting at a mutually agreed upon time and place consistent with policies developed and approved by the district for this purpose.

1. If neither parent can attend the local school district shall use other methods to ensure parental participation, including individual or conference telephone calls.

2. A meeting may be conducted without a parent in attendance if the local school district is unable to convince the parent that they should attend. In such cases the local school district shall have a record of its attempts to arrange a mutually agreed upon time and place, including:

i. Detailed records of telephone calls made or attempted to the home or place of employment and the results of those calls;

ii. Copies of correspondence sent to the parent(s) and any responses received;

iii. Detailed records of visits made to the parents in the home and the results of these visits.

(h) The local school district shall take whatever action is necessary to insure that the parent understand the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(i) A copy of the classification and individualized education program for the pupil shall be signed by members of the basic child study team and shall be provided to the parent(s) in the native language of the home unless it can be demonstrated that this requirement would place an unreasonable burden upon the local school district. In such cases, other means of communication may be used which insure that the parent fully understands the English language transcription of information.

(j) The individualized education program shall be implemented only after agreement by the parent(s) of the child or by order of a classification officer, and must be put into effect within 30 school days of the conference date. Invocation by the parent(s) of the due process procedures described in these regulations suspends this time requirement. If parental consent for the initial program

placement is withheld, the school district may appeal the parental refusal in accordance with the procedures for due process described in these regulations.

(k) The requirements of this section also apply to pupils who have been classified by school physicians or speech corrections as described in these regulations. In such cases, the individualized education program shall be developed at a meeting attended by the school physician or speech correctionist, one or both parent(s), the pupil where appropriate, and the pupil's classroom teacher(s) who are affected by the individualized education program. A school nurse or school nurse practitioner may act on the school physician's behalf in these matters. Basic child study team members shall be included in these determinations where appropriate.]

[6:28-1.9 Procedures for due process]

(a) Written notice shall be given to the parent(s) of a pupil before a school district may initiate and/or change the referral, evaluation, classification or educational placement of the pupil or the provision of a free and appropriate education to the pupil as described in these regulations. If a school district refuses to comply with a parental request for initiation or change regarding any of the processes described, written notice shall be given to the parent.

(b) For purposes of this section, "referral" means the formal procedures adopted by the school district to meet the requirements of these regulations. "Referral" does not include informal reviews or consultations by child study team members or assessments by teachers.

(c) Written notice shall include, but need not be limited to:

1. A full explanation of procedural safeguards described in these regulations;
2. A description of the action proposed or refused by the school district, an explanation for such proposed or refused action, a description of options considered and a rationale for the rejection of such options;
3. A description of evaluation procedures, and other factors the school district uses as a basis for a proposed or refused action.

(d) If the native language or other mode of communication of a parent is not a written language, the school district shall take steps to insure that:

1. The notice be translated orally or by other means to the parent in his/her native language or other mode of communication;
2. The parent understands the content of the notice;
3. There is written evidence that the requirements of this subsection have been met.

(e) Parental consent shall be obtained before a school district may conduct a comprehensive evaluation or make initial placement of a pupil in a program providing special education or related services, as described in these regulations.

1. If parental consent is refused, a school district may request a hearing as described in this section. If the parent or school district invokes these procedures, there shall be no change in the pupil's status until a classification officer renders a binding decision; however, proposed actions may be implemented if a chief school administrator demonstrates to the Office of the County Superintendent of Schools and the Bureau of Special Education and Pupil Personnel Services that failure to implement such actions will cause serious harm to the pupil or other pupils.

(f) A parent or a local school district may invoke their rights under this section whenever a challenge is made to a pupil's referral, evaluation, classification or individualized education program.

(g) A parent or a local school district may request a review or a hearing of their challenge, subject to the following requirements:

1. Within 30 calendar days of receipt of a written request for a review, the agency to whom the request has been directed shall insure that a decision has been reached and copies of the decision have been mailed to the parent(s) and the local school district;
2. Within 45 calendar days of receipt of a written request for a hearing, the agency to whom the request has been directed shall ensure that a final decision has been reached and copies of the

decision have been mailed to the parent(s) and the local school district;

3. A classification officer or reviewing officer may grant specific extensions of time requirements in this subsection at the request of either the parent(s) or the local school district.

(h) A request for a review of a challenge by a parent(s) or a local school district shall be in writing and may be made to the following:

1. The chief school administrator of the local school district;
2. The Office of the County Superintendent of Schools;
3. The Bureau of Special Education and Pupil Personnel Services.

(i) A review shall consist of a conference(s) at which the contentions of the parties are presented, analyzed and discussed. If a review fails to resolve the challenge, each party shall be informed of the right to request further review or a hearing.

(j) A request for a hearing shall be made in writing to the Bureau of Special Education and Pupil Personnel Services. A hearing shall include the following:

1. The hearing shall be conducted by an impartial classification officer of the Bureau of Special Education and Pupil Personnel Services, at a time and place reasonably convenient for the parents;
2. A verbatim record of the hearing shall be kept;
3. Each party shall have access to all records, findings and recommendations which will be introduced at the hearing at least five days prior to the hearing;
4. The parent may be accompanied by a legal counsel or other representative;
5. Opportunity shall be given for either party or their representatives to be heard and to present and cross-examine witnesses and to compel their attendance in accordance with the provisions of N.J.S.A. 18A:6-9 and pertinent rules and regulations.
6. A written decision shall be mailed to each party and shall be based upon impartial consideration of the evidence presented at the hearing. "Impartial" means that the classification officer will weigh all the evidence presented and reach an independent decision without any presumption of correctness to prior recommendations or decisions;

7. The decision of the classification officer shall be binding and shall be implemented without delay: no stay of this decision shall be granted unless a request is made to the classification officer that the decision may cause harm to the child or other children. If the classification officer denies the request, an appeal may be made to the Commissioner of Education;

8. Either party may appeal the classification officer's decision to the Commissioner of Education in accordance with the provisions of N.J.S.A. 18A:6-9 and pertinent rules and regulations with time constraints following Public Law 94-142;

9. The decision of the Commissioner of Education may be appealed to the State Board of Education in accordance with the provisions of N.J.S.A. 18A:6-9 and pertinent rules and regulations with time constraints following Public Law 94-142;

10. The decision of the State Board of Education may be appealed to the New Jersey Superior Court, Appellate Division, in accordance with rules and procedures established by the Court.

(k) The local school district shall provide an independent evaluation at no cost to the parent upon order of a classification officer. An independent educational evaluation means one conducted by an appropriately certified or licensed professional examiner(s) who is not employed by and does not routinely provide evaluations for the local school district responsible for the education of the pupil to be evaluated.]

6:28-1.8 Procedures for due process

(a) Whenever a district board of education, in implementing the provisions of N.J.A.C. 6:28, proposes any action with respect to the referral, evaluation, classification or provision of a free, appropriate education for a pupil, the district board of education shall afford the pupil's parent(s) the procedural rights described in the following sections of this subchapter and in N.J.A.C. 1:6A, Hearing Rules of Special Applicability Special Education Program.

1. Before a district board of education, in accordance with the provisions of this chapter approves or denies, initiates and/or changes the referral, evaluation, classification or educational program of the pupil, the board shall give written notice to the parent(s) of the pupil.

2. When a district board of education, in accordance with the provisions of N.J.A.C. 6:28, proposes to act with respect to the referral, evaluation or educational program of an educationally handicapped pupil, the district board of education must obtain written parental consent.

3. If parental consent is refused, either the parent(s) or the district board of education, through the chief school administrator, may request either an administrative review or a hearing pursuant to this subchapter and N.J.A.C. 1:6A on the issue of the school district's proposed action.

4. When parental consent is refused or emergency relief is not granted, the district board of education shall not implement the proposed action and shall request an administrative review or a hearing as described in N.J.A.C. 1:6A.

(b) If the chief school administrator or parent(s) is concerned that failure to implement the proposed action immediately is likely to result in serious harm to the pupil or other pupils, he or she may apply to the Department of Education for emergency relief, pursuant to N.J.A.C. 1:6A-3.1.

1. The district board of education, through the chief school administrator or the parent(s) may apply in writing to the Department of Education for emergency relief as part of a request for a hearing, or at any time after such a request. The applicant shall provide copies of the request to all parties.

(c) At any time after receipt of a written notice of a proposed or denied action, the parent(s) or the district board of education may request an administrative review. A request for an administrative review is not a prerequisite to a hearing. Once a request for a hearing is made, a request for an administrative review will not be honored.

1. A request for administrative review may be made to the chief school administrator, the county superintendent of schools or the Department of Education.

i. Within 20 calendar days of receipt of a request, the chief school administrator shall meet with the parties and attempt informal resolution. If unsuccessful, the chief school administrator may recommend a hearing at the Office of Administrative Law or a further administrative review.

ii. The county supervisor of child study shall conduct a conference within 30 calendar days of receipt of a request for administrative review, at which time contentions of parties are presented, analyzed and discussed with the objective of reaching an agreement. The conference may lead to a request for an independent evaluation, technical assistance, use of outside professionals, training sessions or information-gathering activities.

iii. Within 30 calendar days of receipt of a request for administrative review, the Department of Education representative(s) shall determine issues, explore options and attempt resolution of conflicts. The role of the Department of Education representative(s) shall not be judgmental, but rather to facilitate agreement.

2. If the parties to an administrative review agree, the conclusions of the administrative review shall be incorporated into a written settlement agreement, signed by each party and binding upon the parties.

3. Parties to the dispute shall be the parent(s) and the educational agency. Either party may be accompanied and advised at an administrative review by legal counsel or other person with special knowledge or training with respect to educationally handicapped pupils and their educational needs, in accordance with Federal law.

(d) The parent(s) may request a hearing after a written notice has been sent to the parent(s) of proposed or denied action or

after 30 calendar days have elapsed from the date of a parent's request for a change with regard to a pupil. The district board of education, through the chief school administrator, may request a hearing when it is unable to acquire parental consent to a proposed action.

1. The hearing request as described in N.J.A.C. 1:6A-2.2 shall be made in writing to the commissioner.

2. Hearings will be conducted by the Office of Administrative Law pursuant to procedures explained in N.J.A.C. 1:6A in order to comply with Federal regulations prohibiting the conduct of hearings by employees of the education agency responsible for the education of the pupil. Each hearing shall be conducted in accordance with rules described in N.J.A.C. 1:6A. The decision of the administrative law judge shall be final.

(e) The parent(s) or adult pupil shall be permitted to inspect, review and appeal the contents of any education records related to the pupil which are collected, maintained or used by the district board of education under this chapter.

1. A parent(s) or adult pupil appealing the contents of any education records shall notify the chief school administrator in writing of the specific challenge. Within 30 calendar days of receipt of the written request, the chief school administrator shall ensure that a meeting with the parent(s) or adult pupil has been held, a decision has been reached and copies of the decision have been given to each party. If the matter is not resolved satisfactorily, the chief school administrator shall inform the parent(s) or adult pupil that he or she may appeal, in accordance with the procedures for administrative review and hearing described in N.J.A.C. 6:24. Any initial decision of an administrative law judge is subject to review by the Commissioner of Education.

6:28-1.9 (Reserved)

6:28-1.10 [Procedures for appeals relating to pupil records of educationally handicapped pupils] **Reserved**

[(a) Parents or adult pupils shall be permitted to inspect and review and appeal any education records related to the pupil which are collected, maintained or used by the school district under these regulations.

(b) A parent or adult pupil appealing records shall notify the chief school administrator in writing of the specific challenge. Within 30 calendar days of receipt of the written request, the chief school administrator shall insure that a meeting with the parent or adult pupil has been held, a decision has been reached, and copies of the decision have been given each party. If the matter is not satisfactorily resolved, the chief school administrator shall inform the parent or adult pupil that he or she may appeal by invoking the due process procedures set forth in these regulations.]

SUBCHAPTER 2. EDUCATIONAL PROGRAMS OF LOCAL SCHOOL DISTRICTS

6:28-2.1 Provision of **educational** programs

(a) All [local public school] district[s] **boards of education** shall provide educational programs and related services for educationally handicapped pupils as recommended by the [basic] child study team of the local [public] school district **in accordance with the following:**

1. Each educationally handicapped pupil shall be provided a special education[al] program [and services] according to how the pupil can best achieve **educational** success [in learning, including related services which are] as specified in the pupil's individualized education program[;].

2. [Where] **When** appropriate, educationally handicapped pupils shall be grouped with or participate with non-educationally handicapped pupils or less severely handicapped pupils in activities that are part of their educational program[;].

3. The participation of **an** educationally handicapped pupil[s] in regular school programs or activities shall be based on the nature and extent [to which] of the **pupil's** capabilities [of the pupil permit]. [Reasonable provisions] **Precautionary arrangements shall be made** to protect the safety and well-being of the pupil [shall be taken into account:].

4. [When the individualized education program of an educationally handicapped pupil capable of being included in physical education, industrial arts, fine arts, music, home economics and other general education programs including intramural and interscholastic sports, extracurricular and cocurricular activities as well as appropriate health, recreational and social activities does not specifically state the need for specialized instruction or related services or describe any restrictions the pupil shall be included in the regular school program provided by the school district;]

When the individualized education program of an educationally handicapped pupil does not specifically state the need for specialized or related services, or if it does not describe any restrictions, the pupil shall be included in the regular school program provided by the district board of education. This includes participation in physical education, industrial arts, fine arts, music, home economics and other regular education programs, intramural and inter-scholastic sports, extracurricular and cocurricular activities, and health recreational and social activities.

5. When instruction in these areas is provided to groups consisting solely of [classified] **educationally handicapped** pupils, the size of the groups and the age range shall conform with the requirements for special class programs described in [these regulations] **this chapter.**

(b) The chief school administrator or designee shall be responsible for the placement of **educationally** handicapped pupils [based on the recommendations of] **as determined by** the [basic] child study team [employed by the local board of education] and in conformance with the pupil's individualized education program.

6:28-2.2 Educational program options

[(a) An educationally handicapped pupil shall be placed in the educational program appropriate to the pupil's needs.]

[(b)] (a) In determining the most appropriate program, an educationally handicapped pupil shall be placed in the program option which is [individually] determined by the [basic] child study team to be the least restrictive environment in view of the pupil's particular educational handicap. The placement shall be in conformance with the pupil's individualized education program.

1. Unless an educationally handicapped pupil's individualized education program requires other arrangements, the pupil shall be educated in the school which the pupil would attend if not handicapped. [Every effort shall be made to place an] **The** educationally handicapped pupil **shall be placed** in an educational setting as close to his[er] home as possible[.].

2. In selecting the least restrictive environment, consideration shall be given to any potentially harmful effect on the pupil [or on the quality of services which the pupil needs].

[(c)] (b) Educational program options shall include **the following:**

1. Instruction in school which complements regular or special class programs through the following means:

- i. Modification of regular classroom programs, **including, but not limited to, vocational, home economics, art, music, physical education and health education programs;**
 - ii. Supplementary instruction;
 - iii. Resource room;
 - iv. Speech correction;
2. A special class program in the **pupil's** local school district;
3. A special education program in the following settings:
- i. [The public schools or a] **Another** local school district;
 - ii. A county vocational and technical school;
 - iii. A county special services school district;
 - iv. An educational services commission;

v. A jointure commission.

4. Public school programs in hospitals, convalescent homes or other private institutions provided by agreement between one or more school districts;

5. A State of New Jersey operated program;

6. **Vocational rehabilitation facilities and [S]sheltered** workshops in conjunction with other educational programs in the local **school** district on a part-time or full-time basis. Such sheltered workshops shall be approved by the Division of Vocational Rehabilitation Services, [State] Department of Labor [and Industry, the Office of the County Superintendent of Schools] and the [Bureau] Department of [Special] Education [and Pupil Personnel Services] **through the county superintendent of schools;**

7. A[n] **Department of Education** approved privately operated day or residential special class in New Jersey or the continental United States, when it is not [possible] **appropriate** to provide services pursuant to [paragraphs 1, 2, 3, 4, 5, and 6 of] this [sub]section. Placements in such facilities may only be made with the [advance] **prior** written approval of the [county supervisor of child study and the Bureau] **Department** of [Special] Education [and Pupil Personnel Services];

8. Individual instruction at home or in school, **excluding home instruction for medical reasons,** [whenever in the judgment of the local board of education,] with the **written** approval of the [Office of the C]county [S]superintendent of [S]schools [and the Bureau of Special Education and Pupil Personnel Services], **when** it is [impracticable] **impractical** to provide [a suitable] **an appropriate** special education program for [a pupil pursuant to paragraphs 1, 2, 3, 4, 5, 6, or 7 of this subsection] **an educationally handicapped pupil in accordance with this section;**

9. **A combination of any of the above options.**

6:28-2.3 Programs for educationally handicapped preschool pupils

(a) **A program for an educationally handicapped preschool pupil shall contain the following components:**

1. **A curriculum that provides for the physical, social, emotional, communicative and cognitive development of each child through opportunities for active learning; sensorimotor and psychomotor experiences; language and other symbolic activities; play and aesthetic expression including music and art;**

2. **Materials and equipment appropriate to the learning activities and the developmental level of the pupil;**

3. **A diapering area as needed in the classroom with facilities for the sanitary disposal of soiled diapers;**

4. **A written plan that describes family involvement. The plan shall include the following:**

i. **The allocation of time for instructional staff to conduct parent involvement activities and educational planning within the school day or school week;**

ii. **A description of staff activities in detail;**

iii. **A description of a family involvement program which includes parent participation, parent and child interaction, social and emotional support activities and information-sharing activities;**

iv. **A description of home and school communication activities that offer varied opportunities for parents to acquire skills, knowledge and techniques to better understand and cope with the needs of their educationally handicapped preschool child.**

5. **The family involvement plan shall be included in the district board of education program plan.**

(b) **When an educationally handicapped preschool pupil is unable to be served in a school-based program, the district board of education shall provide special education and related services in a home-based program. The home-based program shall be approved by the Department of Education prior to placement of a pupil. The home-based program shall provide a minimum of four hours per week of staff contact with the**

pupil and family. A pupil enrolled in a home-based program shall be entered on the local school district home instruction register.

6:28-2.[3]4 Certification [for] of personnel serving educationally handicapped pupils

(a) All professional personnel serving educationally handicapped pupils shall [possess] **hold** appropriate New Jersey certification or [licensing] **licensure commensurate with their assignments.**

(b) [Pupils classified as] **E[e]ducationally handicapped pupils** in special class programs shall be the primary instructional responsibility of a teacher certified to teach **educationally handicapped** pupils [so disabled]. Such teachers shall work cooperatively with other teachers to whom the educationally handicapped pupil may be assigned for portions of his [/] or her educational program.

(c) In **resource room** programs [other than special classes], the instructional responsibility shall be shared between teachers holding [general] **regular education certificates and those holding** [or] special education certificates, dependent on the nature of the program and the [teachers providing required] services provided.

(d) Professional personnel providing supplementary instruction and speech correction services shall hold the appropriate New Jersey certification commensurate with the specific curricular area and level in which instruction is given.

(e) All teachers of educationally handicapped preschool pupils shall hold a valid New Jersey teacher of the handicapped certificate pursuant to N.J.A.C. 6:11-8.4(c)(4) and nursery school endorsement pursuant to N.J.A.C. 6:11-8.4(b)(13). This procedure shall remain in effect until a new certification policy for teachers of educationally handicapped preschool pupils is promulgated.

(f) Emergency and provisional certificates may be issued in accordance with N.J.A.C. 6:11-4.4 to teachers employed in programs for educationally handicapped preschool pupils who possess either teacher of the handicapped certificate or nursery school endorsement.

(g) An auditorily handicapped preschool pupil shall be taught by an appropriately certified teacher of the handicapped with nursery school endorsement or a teacher of the deaf or hard of hearing with nursery school endorsement as prescribed in the pupil's individualized education program.

6:28-2.[4]5 Classroom aides

Classroom aides, under the direction of a principal, teachers of the handicapped, general education teachers or other appropriately certified personnel, may assist the teacher in special classes or other [special] programs. **The job descriptions** of classroom aides shall be approved by the [C]county [S]superintendent of [S]schools in the county in which they are employed.

6:28-2.[5]6 **Comprehensive system of [P]ersonnel development [plan]**

(a) Each [local school] district **board of education** shall be responsible for the establishment and implementation of a comprehensive [plan] **system** of personnel development. [The plan shall be developed with the participation of representatives of the community, the professional staff serving the district and other appropriate groups.]

(b) [The plan shall be consistent with the annual state plan of the State Department of Education.]

The comprehensive system of personnel development shall be developed with the participation of community representatives, the professional staff serving the district board of education and other appropriate groups such as organizations for the handicapped, bilingual-bicultural specialists, vocational educators, school board members, handicapped pupils, parents and teacher organizations. The comprehensive system of personnel development shall provide a written plan that

includes an annual district-wide needs assessment, the establishment of personnel development priorities, implementation of training activities to meet priorities and evaluation of all training activities.

6:28-2.[6]7 Diplomas and graduation

(a) An educationally handicapped pupil who **entered a high school program prior to September 1981 and who** successfully completes his or her prescribed individualized education program as determined by a basic child study team, shall receive the secondary diploma of the local school district responsible for his or her education. [If a pupil attends a school outside of the local district which is empowered to grant a secondary diploma, the parent or adult pupil shall have the choice of receiving the diploma of the school attended or the diploma of local school district responsible for his/her education. These requirements shall apply also to local school districts which grant elementary diplomas.]

[(b) Educationally handicapped pupils shall be provided the opportunity to participate in graduation exercises and related activities on a non-discriminatory basis.]

(b) **An educationally handicapped pupil who entered a high school program in September 1981 or thereafter shall meet the high school graduation requirements pursuant to N.J.A.C. 6:8-4.2, unless exempted in his or her individualized education program. The individualized education program must specifically address these graduation requirements. Fulfillment of the individualized education program requirements would qualify the educationally handicapped pupil for a State endorsed diploma.**

(c) **If a pupil attends a school other than that of the school district of residence which is empowered to grant a diploma, the pupil shall have the choice of receiving the diploma of the school attended or the diploma of the school district of residence.**

(d) **If a district board of education grants an elementary school diploma, an educationally handicapped pupil who fulfills the requirements of his or her individualized education program shall qualify for a diploma.**

(e) **Educationally handicapped pupils shall have the opportunity to participate in graduation exercises and related activities on a non-discriminatory basis.**

[6:28-2.7 Evaluation of local public school district programs

(a) Local school districts shall establish and implement criteria to evaluate the effectiveness of their programs for the education of the handicapped in conformity with the requirements of N.J.S.A. 18A:7A-1 et seq.

(b) Such criteria and evidence of their use shall be subject to review and approval by the Office of the County Superintendent of Schools and the Bureau of Special Education and Pupil Personnel Services.]

6:28-2.8 [Special requirements on promotion and transfer from schools] **Transition and transfer of educationally handicapped pupils**

[(a) Determination that an educationally handicapped pupil has completed an elementary school program shall be based on the recommendations of a basic child study team and shall be consistent with the pupil's individualized education program. [The chief school administrator or his/her designee shall be responsible for implementing the transfer of the pupil from an elementary school program to a secondary school program. The pupil's program shall then become the responsibility of the secondary school. Transition from elementary school to the secondary school shall be determined by factors including number of years in school; social and vocational development; chronological age; need for the social, vocational and varied instructional opportunities of the secondary school; and achievement in keeping with the pupil's abilities and needs.]

(a) **Transition from elementary school to the secondary school**

shall be determined by factors including number of years in school; social and vocational development; chronological age; need for the social, vocational and varied instructional opportunities of the secondary school and achievement commensurate with the pupil's abilities and needs. The pupil's educational program shall then become the responsibility of the secondary school. The chief school administrator or designee shall be responsible for implementing the transfer of the pupil from an elementary school program to a secondary school program.

(b) [In the event that] If [immediate classification and] an individualized education program review cannot be [provided] conducted when an educationally handicapped pupil transfers from one local school district to another, the pupil shall [continue with his former classification and] be placed in a program consistent with the current individualized education program for a period not to exceed 30 calendar days.

(c) In a formal sending-receiving relationship, the receiving school [becomes] shall be responsible for the pupil's [classification and the] individualized education program. [A formal sending-receiving relationship is one in which a local school district with a secondary school program has agreed contractually to provide a secondary school education for the general pupil population of an elementary school district.]

(d) In other than formal sending-receiving relationships, a contractual agreement shall be made between [school] district[s] boards of education [regarding educationally handicapped pupils] which specifies responsibility for providing special instructional services and child study team services to educationally handicapped pupils.

6:28-2.9 Program evaluation

The chief school administrator, through appropriate personnel, shall establish and implement a plan to evaluate special education programs and services in conformance with the requirements of N.J.S.A. 18A:7A-1-16 and this chapter.

SUBCHAPTER 3. ELIGIBILITY OF DISTRICT BOARDS OF EDUCATION TO RECEIVE STATE FUNDS

6:28-3.1 General requirements [to establish eligibility for State funds]

(a) [Approval of programs of special education by the Office of the County Superintendent of Schools and the Bureau of Special Education and Pupil Personnel Services shall be secured by local school districts to establish eligibility to receive state funds.]

The county superintendent of schools will review and the Department of Education shall approve all special education plans and programs in accordance with the eligibility criteria established in this subchapter.

(b) [Programs of s]Special education programs shall be consistent with the [annual] program plan submitted by the [local school] district board of education [and approved by the Office of the County Superintendent of Schools and the Bureau] to the Department of [Special] Education [and Pupil Personnel Services].

(c) [State Department of Education health and safety requirements shall be met.]

All district board of education proposals to establish, change, expand or decrease special education programs or services to educationally handicapped pupils in local school districts shall be reported to the Department of Education.

(d) [Adequate] Appropriate facilities shall be provided for educationally handicapped pupils in accordance with standards established by the Department of Education and shall include at least the following:

1. Facilities shall allow for the use of [such] special equipment [and activity programs] which [pertain to the need] meet the needs of [the] educationally handicapped pupils[;].

2. Facilities provided [the] for educationally handicapped pupils shall be comparable to those provided for the [general] regular pupil population[;].

3. [Necessary p] Provisions shall be made to ensure that school programs are accessible to [the] educationally handicapped [population:] pupils[;].

4. [Emergency a] Approval of [temporary quarters for such facilities shall have the annual approval] emergency special education program space shall be granted by [of] the [County Superintendent of Schools] Department of Education.

(e) Cooperative arrangements for providing services to educationally handicapped pupils shall meet the provisions of N.J.S.A. 18A:46-1 et seq. and [these regulations] this chapter.

(f) Supervision of educational programs for [the] educationally handicapped pupils within a local school district shall be performed by appropriately certified supervisors of instruction.

(g) The functioning of the basic child study teams within the local school district[s] shall be in accordance with [all applicable provisions of these regulations] this chapter.

(h) Appropriate curricula shall be developed for the implementation of educational programs and appropriate materials shall be provided for educationally handicapped pupils.

6:28-3.2 Eligibility [C]riteria for [approval] types of special education programs

(a) All programs [of] for special education [are subject to the approval of the Office of the County Superintendent of Schools and the Bureau of Special Education and Pupil Personnel Services] shall have the written approval of the Department of Education prior to implementation. Program approval shall be made through the county superintendent of schools.

(b) [Supplemental] Supplementary instruction and speech correction services [shall be instruction] provided for educationally handicapped pupils [which is given] in addition to the regular instructional program [of such pupils. It] shall meet the following criteria:

1. [Supplemental instruction for the educationally handicapped pupils shall be provided in a school or other facility operated and controlled by the local school district.]

[2. Supplemental] Supplementary instruction and/or speech correction services shall [be considered a part of the planned curriculum for] relate to the educationally handicapped pupil's [for whom it has been prescribed] individualized education program as prescribed by [a basic] the child study team [,] or [a] the speech correctionist [and described in the pupil's individualized education program;].

[3.]2. [Supplemental] Supplementary instruction and/or speech correction services for [the] educationally handicapped pupils, may be given individually or in small groups [,] not to exceed three pupils[;].

4. Supplemental instruction shall be provided in physical facilities conducive to learning;

5. The teachers providing supplemental instruction shall be appropriately certified for the subject or level in which instruction is given.]

(c) Resource room programs shall be instructional centers which offer individualized [instruction] and small group instruction [in basic subject skills or other instructional areas which are] as described in a pupil's individualized education program and meet the following criteria:

1. Educationally handicapped pupils in resource rooms shall be enrolled on a regular public school classroom register and in a class with their chronological [age]peers;

2. The resource room teacher shall hold appropriate certification as ["] teacher of the handicapped ["];]

3. A resource room teacher shall be provided time each school week equivalent to one hour or at the secondary or departmental level one instructional period per school day in the week, for consultation with the regular teaching staff;

4. [Types of s]Special education resource room programs shall be **designated as follows:**

i. Single handicap program [(all)] shall include **educationally handicapped** pupils [of the same classification];] **with the same handicapping condition;**

ii. [Mixed] **Diversified** handicap program shall include **educationally handicapped** [(pupils with different [classifications])] **handicapping conditions;**

iii. Open program shall include [both] **educationally non-handicapped and educationally handicapped** [pupils].

5. The number of pupils [that] **who** can be [assigned to a] **served in an elementary or secondary school** resource room program at any given time shall not exceed five. The total number of **elementary school** pupils [that] **who** can be assigned to a resource room teacher shall [not] be **no** fewer than four [or] **and no** [more] **greater** than 20[.];] **during the school day. The total number of pupils who can be assigned to a resource room teacher in a secondary school shall be no fewer than four pupils and no greater than 25 pupils in the school day.**

6. Pupils shall not participate in resource room programs in excess of two hours daily;

7. Exceptions to these requirements [may] **shall** be made only with [the advance] **prior** written approval [of] **from** the **Department of Education through the** [Office of the C]county [S]superintendent of [S]schools [and the Bureau of Special Education and Pupil Personnel Services].

(d) Special class programs shall be [class programs which are primarily self-contained and are] under the direction of a certified teacher of the handicapped[. They] **and** shall meet the following criteria:

1. A special class [may only] **shall** serve [one category of] **educationally** [handicapping conditions, and class] **handicapped pupils who have the same handicapping condition. Class sizes for [a category may] educationally handicapped pupils with the same handicapping condition shall** not exceed the following:

i. Auditorily handicapped – [8] **eight** pupils;

ii. Chronically ill – 15 pupils;

iii. Communication handicapped – [8] **eight** pupils;

iv. Emotionally disturbed – [8] **eight** pupils;

v. Mentally retarded, Educable – 15 pupils;

[vii.]vi. Mentally retarded, Trainable – 10 pupils;

[vi.] vii. Mentally retarded, Eligible for day training – [9] **nine** pupils per classroom with a pupil [/] to staff ratio of three to one;

viii. Multiply handicapped – [8] **eight** pupils;

ix. Neurologically impaired – [8] **eight** pupils;

x. Orthopedically handicapped – 10 pupils;

xi. Perceptually impaired – 12 pupils;

xii. Preschool handicapped – eight pupils;

[xii.] xiii. Socially maladjusted – 12 pupils;

[xiii.] **xiv. Visually handicapped – [8] eight pupils.**

2. The above maximum class sizes, with the exception of eligible for day training programs **and educationally handicapped preschool programs**, may be increased by no more than one-third by the addition of teacher aides or auxiliary teachers [with advance] **by obtaining prior** written approval from the **Department of Education through the** [Office of the C]county [S]superintendent of [S]schools [and the Bureau of Special Education and Pupil Personnel Services].

3. Eligible for day training programs [must] **shall** conform [with] to additional requirements described in [SUBCHAPTER 10 of these regulations] **this chapter**[.];]

4. Enrollment in **secondary school** special **education** classes [in secondary school] **or departmentalized** programs may be increased by one-half the maximum class size for [the specific category of] **educationally handicapped pupils with the same handicapping condition.** [provided that f]For [academic] instructional purposes, no group shall contain [at any one time during a school day] more than the maximum number of **educationally handicapped** pupils with [designated to a specific

category of handicaps:] **the same handicapping condition.**

5. **Classes established for educationally handicapped preschool pupils shall contain a maximum of eight pupils with one teacher and an aide. No classroom shall contain more than 10 educationally handicapped preschool pupils. Classes larger than eight pupils shall have one teacher and two aides or one teacher, one aide and a speech correctionist. Reduction in class size shall occur in accordance with the preschool child study team's recommendation in programs serving pupils with severe or profound handicapping conditions.**

[5.]6. The age span in special education classes shall not exceed four years[.];].

[6.]7. [All] Any exception[s] regarding class size, **group size**, age range and [classification] **program** restrictions may be made only with prior written approval of the **Department of Education through** [Office of] the [C]county [S]superintendent of [S]schools [and the Bureau of Special Education and Pupil Personnel Services].

(e) [Individual] **Home** instruction shall be [instruction] provided **in lieu of classroom instruction** for pupils [confined to homes or hospitals] **determined as requiring home instruction** by a physician or **child study team** [in lieu of regular classroom instruction] and shall meet the following criteria:

1. Pupils [confined to their home or to a hospital by a physician because of illness or injury] **requiring home instruction** shall receive an appropriate educational program at their place of confinement upon [ascertainment and] written notification **by a physician** to the chief school administrator that such confinement is expected to extend to a period of at least two weeks. Instructional services shall begin no later than five school days after the notification [of the school physician] has been received[.];].

2. [It is not necessary for a] **A basic child study team shall not be required** to [determine the] **approve** a pupil's [eligibility] **need** for [individual] **home** instruction when the pupil's absence from school is reported by the school physician [to be] due to physical or medical reasons[.];].

3. [The] **Home** instruction shall be **provided** for not less than five hours per week. [except when recommended] **Exemption from this time requirement may be made** by the basic child study team or school physician. The[se] five hours of **instruction, per week**, shall be accomplished [by] **in** no less than three visits by a teacher on three separate days[.];].

4. The pupil **assigned** [placed on individual] **to home** instruction [on the recommendation of the school physician or child study team] shall receive [no less] a program [than] that **meets** [required by] the **requirements of the [local] district** board of education for promotion or graduation[.]. [unless] **When appropriate**, the school physician or child study team [finds the scope of such a program would be detrimental to the pupil:] **may exempt the pupil from specific graduation or promotion requirements.**

5. Teachers providing [individual] **home** instruction shall be certified in the areas of [the pupil's handicap,] **special education** or [school level] **subject** [or subject].;

6. [Individual h] **Home** instruction [providing] **provided** by direct communication [with] **to** a classroom program by telephone or television may be given without the presence of a teacher at the pupil's place of confinement for all except two hours per week of [the] instruction. [Such] **The two hours of instruction shall be provided with a teacher present and shall** extend over two days [by a teacher][.];].

7. The basic child study team shall be notified by [a person designated by] the chief school administrator **or designee** when a pupil's [confinement] **assignment** to [a] home [or hospital] **instruction** exceeds 30 [calendar] school days. **The basic child study team shall determine if additional services are required**[.];].

8. **Requests to extend home instruction beyond 30 school days shall be approved by the Department of Education.**

(f) The provision of [physical therapy, occupational therapy and

related] **all** educational services shall be based on the recommendations of the [basic] child study team as described in the written individualized education program of an educationally handicapped pupil. [Local school districts may contract for the provision of physical therapy and occupational therapy in clinics approved by the Office of the County Superintendent of Schools and the Bureau of Special Education and Pupil Personnel Services.] **All services with the exception of recreation shall be provided by appropriately certified school personnel employed by the district board of education. Recreation services by qualified personnel may be provided by the district board of education or by other recognized community agencies.**

(g) Departmentalized programs may be offered to educationally handicapped pupils at the secondary school level. Such programs shall meet the following criteria:

1. Educationally handicapped pupils in departmentalized programs may be enrolled in regular or special classes;

2. Teachers shall be appropriately certified in the subject area in which instruction is given;

3. Educationally handicapped pupils with different educationally handicapping conditions may be grouped together for instruction in departmentalized programs;

4. The maximum class size for pupils with different handicapping conditions assigned to the same class period shall be based on the lowest number of pupils allowed for any given category of educationally handicapped pupils with the same handicapping condition;

5. In departmentalized programs, no class period shall contain more than the maximum number of educationally handicapped pupils with the same handicapping condition;

6. Educationally handicapped pupils enrolled in special classes or regular classes and assigned to departmentalized programs shall be in attendance in special class or regular class for a minimum of two periods daily.

6:28-3.3 Length of school day and academic year

(a) The length of the school day and the [school] **academic year** for [the] educationally handicapped **pupils** shall be **at least** the same as that established for all pupils.

(b) Exception to requirements [on] for the length of the school day and **academic year** for an [individual] **educationally handicapped** pupil shall be made only on the recommendation of a basic child study team as described in [an] the individualized education program [with the approval of] **and approved by** the chief school administrator[,] **and the Department of Education through the** [Office of the] [C]county [S]superintendent of [S]schools. [and Bureau of Special Education and Pupil Personnel Services.] Temporary adjustments may be made for an [individual] **educationally handicapped** pupil by a school administrator or a basic child study team if [it can be demonstrated that] such adjustment [was] **is** necessary to protect the pupil or others from harm.

(c) **Programs for educationally handicapped preschool pupils shall be in operation a minimum of 180 days per calendar year.**

(d) **Pupil attendance in programs for educationally handicapped preschool pupils shall be a minimum of 10 hours per week, which shall occur within a four or five day period. Exemptions to the attendance requirements shall be made only by approval of the Department of Education.**

6:28-3.4 Transportation of **educationally** handicapped pupils

(a) The [local] **district board of education** shall [furnish daily] **provide** transportation [within the state to] **for** an educationally handicapped pupil as required in the individualized education program [and as described by the basic child study team] or as prescribed by the school physician. Such transportation is subject to the approval of the [Office of the County Superintendent of Schools] **Department of Education.**

(b) The [local] **district board of education** shall provide such

services as may be necessary to [insure] **ensure** the required provision of transportation of educationally handicapped pupils. Such services[, when required,] shall include special transportation equipment, transportation aides and special arrangements for other assistance to and from the classroom and in and around the school. Arrangements shall include, [provisions to assure safety and protection from harm.] **but not be limited to, the following:**

1. **Health, safety and welfare precautions;**

2. **Consideration of the length of transportation time related to various handicapping conditions;**

3. **Planning for the number of educationally handicapped pupils and/or aides on vehicles when necessary.**

(c) **When recommending transportation for an educationally handicapped pupil, a member of the child study team shall provide the transportation coordinator and the bus driver with specific information concerning safety, health and behavioral characteristics of the pupil assigned.**

6:28-3.5 [Annual p]Plans for special education [and related services]

(a) Each [public school] district[,] **board of education;** jointure, county, regional **board of education;** or State-operated program for the educationally handicapped shall provide, [in writing, an annual plan for the educational program of the handicapped] **a written plan for special education.** [Such] **The** plan shall be in [conformity] **conformance** with the [annual s]State plan for the [education of the] **educationally** handicapped. [Annual p]Plans for **special education** shall be submitted for approval to the **Department of Education through** [Office of] the [C]county [S]superintendent of [S]schools [and the Bureau of Special Education and Pupil Personnel Services prior to June 30 for the following school year for which approval is requested].

(b) The development of the [annual] **plan for special education** shall include the participation of community representatives, the professional staff serving the district, [and] other appropriate groups **and shall be presented at a public meeting prior to approval by the district board of education.** [Special e]Efforts shall be made to include [the participation of] handicapped individuals and groups representing the handicapped population.

(c) The [annual] plan for **special education** shall include:

1. [A listing of the] **An annual tabulation of the numbers of educationally handicapped pupils according to their classification,** professional staff assigned to identify, [classify] **evaluate, develop individualized education programs** and instruct **educationally** handicapped pupils, and the full-time equivalence of their assignments;

2. **Annual [A]assurance** of the availability of individual education programs for each **educationally** handicapped pupil in **compliance with this chapter;**

3. Evaluative criteria to be used by the district in determining the effectiveness of the **special education** program;

4. The methods used by the district [to locate,] **board of education** to identify, **evaluate,** [and classify the] **develop individualized education programs and place educationally handicapped pupils;**

5. Methods and procedures used by the district **board of education** to ensure compliance with [these regulations] **this chapter and the implementation of the plan for special education[.];**

6. **A list of the special education needs of the district board of education in programs, personnel, facilities, related services and other areas where appropriate.**

(d) **Upon request,** [A]additional reports shall be made available [upon request] to the [State]Department of Education.

6:28-3.6 [School d]District **board of education** compliance information

(a) [Local public school d]District[s] **boards of education** shall maintain information necessary to indicate compliance with the requirements of [these regulations] **this chapter.**

(b) Such information shall be made [accessible] **available** to the [Office of the C]county [S]superintendent of [S]schools and the [Bureau] **Department** of [Special] Education [and Pupil Personnel Services upon request].

(c) [All maintenance of r]Records shall be **maintained** in accordance with [rules and regulations pertaining to pupil records] **this chapter and N.J.A.C. 6:3-2.**

SUBCHAPTER 4. [ELIGIBLE] **APPROVAL OF PRIVATE SCHOOLS FOR THE EDUCATIONALLY HANDICAPPED**

6:28-4.1 **General requirements for [A]approval of [eligible] private schools for [the] educationally handicapped pupils**

(a) [The Bureau of Special Education and Pupil Personnel Services shall approve the eligibility of private schools to provide educational programs to educate handicapped pupils under contractual arrangements with local boards of education.] **The Department of Education shall establish criteria for the approval of private schools furnishing educational services. Such criteria shall apply, but not be limited to, educational program(s), setting of tuition rates, filing of financial statements, return of monies by private schools to the Department of Education and any reports deemed necessary.**

(b) [Procedures for placement of individual educationally handicapped pupils in eligible private schools shall be prescribed by the Bureau of Special Education and Pupil Personnel Services.] **The Department of Education shall approve private schools to provide educational programs for educationally handicapped pupils under contractual arrangements with district boards of education.**

(c) **A proposed new private school program shall be considered for approval based upon demonstration of the need for such a program.**

(d) **Procedures for placement of educationally handicapped pupils in approved private schools shall be established by the Department of Education.**

6:28-4.2 **Criteria for [eligibility] approval**

(a) Special education programs in [eligible] **approved** private schools shall be operated in compliance with the requirements of N.J.S.A. 18A:46-1 et seq. and [these regulations] **this chapter.**

(b) The [Bureau] **Department** of [Special] Education [and Pupil Personnel Services] shall be notified [in advance of] **prior to** the establishment of a private school which will provide services to educationally handicapped pupils. [A program plan] **The private school shall [be] forward[ed] to the [Bureau] Department of [Special] Education [and Pupil Personnel Services and] a program plan and [shall include:] the results of an assessment demonstrating the need for such a school.**

1. A survey and needs assessment indicating the length of school day, number of classified pupils to be served in the program by handicap, sex and age, and existing educational programs and resources available to these pupils;

2. A program rationale indicating the desirability and feasibility for the private school;

3. Nature and scope of educational and related services to be offered including individualized education program objectives;

4. Organizational structure including projected personnel by title;

5. Description of proposed curricula in terms of objectives and content;

6. Administrative and program policies and procedures including a bookkeeping system approved by the Division of Finance and Regulatory Services.]

(c) [To be eligible to receive educationally handicapped pupils, t]The physical facilities of a private school in the State [of New Jersey] shall be approved annually by the county superintendent of schools, [or] according to the guidelines established by the Bureau

of Facility Planning Services. **Annual fire and health inspections shall be required for physical facility approval. The Department of Education may approve for placement [A]ny out-of-state [facility] private school for educationally handicapped pupils [shall be approved annually] which has been approved currently** by the appropriate state education agency in the state in which the facility is located [or by the Bureau of Special Education and Pupil Personnel Services].

(d) Each [eligible] **approved** private school shall file an affidavit with the [Bureau] **Department** of [Special] Education [and Pupil Personnel Services] that its services are nonsectarian and that its operations are in compliance with N.J.S.A. 18A:46-1 et seq., **applicable Federal law, rules and regulations,** [these regulations and regulations pertaining to pupil records] **this chapter and N.J.A.C. 6:3-2.**

(e) Administrators, supervisors and teachers in [eligible] **approved** private schools in New Jersey shall be [fully] certified to function in their respective roles in accordance with the requirements of the State Board of Examiners. [The record of each individual's] **All personnel certification documents** shall be [maintained] **recorded** in the [O]ffice of the [C]ounty [S]uperintendent of [S]chools in the county in which the private school is located.

(f) Teachers employed in [eligible] **approved** private schools shall be supervised **and evaluated on a regular basis** by an individual holding an administrator's, principal's, or supervisor's certificate. [Such supervision shall be commensurate with that provided in local public school districts.]

(g) All other [individuals] **personnel** furnishing supportive and related [professional] services in [eligible] **approved** private schools shall be certified or licensed [for the] **to perform their professional function(s)** [in which they engage].

(h) Each professional person [occupying a position and] providing educational services [to] **for** New Jersey public school pupils in an [eligible] **approved** private school outside [of New Jersey] **the State** shall hold an appropriate teaching certificate or license from the state in which the private school is located.

(i) The [eligible] **approved** private school [or organization] shall make available to the [Bureau] **Department** of [Special] Education [and Pupil Personnel Services] such records as are required for the computation of tuition costs. Instructional or day costs [must] **shall** be listed separately from the costs of room, board [or] **and** treatment. [Capital improvement shall not be included in determining tuition costs.] **The Department of Education shall determine annually allowable and nonallowable budget items. All financial and bookkeeping records shall be kept in accordance with procedures outlined by the Department of Education. The approved private school shall submit annually an independent certified audit to the Department of Education.**

(j) [Each] **The district** board of education shall establish a written contract with [each eligible] **an approved** private school for each **educationally handicapped** pupil it approves to attend [an eligible private] **that school. The contract shall include written agreement concerning tuition charges, costs, terms, conditions, services and programs to be provided for the educationally handicapped pupil.**

6:28-4.3 **Expenditure of funds**

(a) [Payments of any funds by a local board of education to an eligible private school are subject to advance approval by the Office of the County Superintendent of Schools and the Bureau of Special Education and Pupil Personnel Services.] **Once approval for program placement of an educationally handicapped pupil in an approved private school is recorded in the minutes of the district board of education, tuition payments may be made retroactive to the date the basic child study team determined the need for the program placement.**

(b) A [local] **district** board of education shall be responsible for the day school cost of an [individually] approved private school placement for an educationally handicapped pupil.

(c) The rate of tuition payment by a [local] **district** board of education to an [eligible] **approved** private school shall be [determined] **approved** by the [Bureau] **Department of [Special] Education [and Pupil Personnel Services].**

[(d) Payments shall be made from the time the local board of education records the approval in its minutes until the placement is terminated by the board, the private school, the parents of the pupil or the state agency which placed the pupil.

(e) Boards of education may provide tuition costs for eligible private school placement retroactive only to the time the local child study team had determined the need for such program. Tuition payments can be made only for the current school year.]

[(f)] (d) Monies paid by a **district** board of education to an [eligible] **approved** private school [are] **shall be** for services already rendered. [No prepayment of any kind may be made by either a parent or a board of education. No parent may] **Parents shall not** be charged any cost relating to educational services described in an individualized education program.

[(g)] (e) Residential costs shall be assumed by the public agency which places [a] **an educationally handicapped** pupil in a residential school. A [local school] **district board of education** shall not be responsible for residential costs when **the** reason for placement is due to home conditions or parental choice and a free; [and] appropriate education can be made available in a nonresidential school.

(f) Placements of **educationally handicapped** pupils in residential schools by public agencies other than [local school] **district[s] boards of education** shall be subject to regulations governing such agencies and [these regulations] **to this chapter.** These provisions do not eliminate responsibility of a [local school] **district board of education** to pay the day school **special** education cost [portion] of [a] **an educationally handicapped** pupil[']s special education) in a residential program. [w]When the pupil has been placed under the authority of a public agency empowered to make such placement, **the placement shall meet the individualized education program requirements of the pupil.**

(g) **The chief school administrator or designee shall participate with the public agency in the placement decision when a district board of education is expected to be responsible for the cost of the education of the pupil.**

6:28-4.4 Educational programs in [eligible] **approved** private schools

(a) The educational program of [a] **an educationally handicapped** pupil in an [eligible] **approved** private school shall be considered the educational program of the [local school] **district board of education** and shall be subject to the following:

1. The [instructional] **educational** program shall conform to the individualized education program developed by the **basic child study team of the** local school district [as specified in writing]. Physical education, industrial arts, fine arts, home economics, health services and [related] **other educational** services shall be provided on a basis comparable to that provided in [a] the pupil's local school district[;].

2. For an out-of-state placement, a [local school] **district [representative] board of education** shall [make reasonable efforts to visit the facility or seek] **request** information **about [from] the [Bureau of Special Education and Pupil Personnel Services] approved private school selected and make a reasonable effort to have representative(s) of the district board of education visit the private school[;].**

3. No pupil shall be [admitted to a] **placed in an approved** private school unit it has been determined that his or her [special] needs can be met by that [facility] **school** in keeping with the [prescribed] individualized education program. Prior to placement in [a] **an approved** private school in New Jersey, a [local school] **district board of education** representative **and, if possible,** the parent(s)[, if possible,] shall visit the [facility] **school.** For an out-of-state placement, the **basic child study team** shall [make every effort to

insure] **ensure that** the educational program [is adapted to the special needs and abilities] **fulfills the individualized education program of the pupil[;].**

4. The **approved** private school shall file reports on the adjustment and [instructional] progress of each pupil [at regular intervals] as stipulated by the sending **district board of education** in the contractual agreement. Such reports shall be furnished **at regular intervals** at least three times during the school year. The reports shall indicate the [child's] present level of educational performance and progress **of the pupil** in fulfilling instructional objectives as outlined in the individualized education program[;].

5. The [local school] **basic child study team of the district[']s board of education shall be responsible for the development and annual review of the individualized education program** and shall ensure that a representative of the [eligible] **approved** private school participates in the annual review and in any revision of the individualized education program [pursuant to these regulations] **in conformance with this chapter[;].**

6. Class size shall conform to the requirements established for each category of **educationally handicapping conditions** as specified in [these regulations] **this chapter.** [No exception shall be granted to these requirements;]

7. Educational programs in [eligible] **approved private schools** shall be open to observation at any time to the [chief school administrator] **representatives** of the sending **district board of education** and [or his representative, to representatives of the office of the county superintendent of schools and the Bureau of Special Education and Pupil Personnel Services and to other] representatives of the [Commissioner of Education] **Department of Education.**

8. **Exemptions from the requirements in this subchapter shall be made only with prior written approval from the Department of Education. Exemptions regarding class size, class age range and pupil placement shall be made with the prior written approval of the Department of Education upon request from the county superintendent of schools in the county in which the responsible district board of education is located.**

6:28-4.5 Records in [eligible] **approved** private schools

(a) Private schools receiving pupils from [public] **local** school districts [are] **shall be** subject to the requirements of [rules and regulations] **N.J.A.C. 6:3-2** pertaining to pupil records.

(b) [All r]Records of [general and special evaluations by] **approved** private school personnel pertaining to and used in the identification, **evaluation,** [classification,] placement, instruction and progress of [the] **an educationally handicapped** pupil shall become a part of the [pupil's] mandated records **of the pupil** and shall be the property of the [local public school] **district board of education** responsible for the [pupil's] education **of the pupil.**

(c) Requests for access to pupil records by authorized organizations, agencies, or persons as defined in **N.J.A.C. 6:3-2** [in the rules and regulations pertaining to pupil records] shall be directed to the chief school administrator or designee of the local [public] school district.

(d) [Eligible] **Approved** private schools shall receive and maintain records **and dates** of immunization of [every] **each** pupil [and the dates of each immunization].

(e) The attendance of each **educationally handicapped** pupil for whom tuition is received by **the approved private school** shall be recorded in the monthly tuition voucher and shall be submitted to the [local] **district** board of education. Habitual tardiness or prolonged absences shall be [called to the attention of] **reported to** the chief school administrator **of the local school district.**

(f) [Upon completion or termination of the educational program of an educationally handicapped pupil in a private school, all pupil records in the possession of the private school shall be returned to the local public school district.] **The daily attendance record of all pupils in in-State approved private schools shall be maintained in registers provided by the Department of Education.**

(g) An annual report of all educationally handicapped pupils placed in an approved private school shall be submitted to the Department of Education by the approved private school.

(h) Upon completion or termination of the educational program of an educationally handicapped pupil, all of the records of the pupil in the possession of the approved private school shall be returned to the district board of education.

6:28-4.6 [Academic year and school day] **Length of school day and year** for [eligible] approved private schools

(a) The [academic] school year shall be defined as the period between the time school opens in the local school district[,] after the general summer vacation[,] until the next summer vacation of the sending local school district, [school] and shall consist of at least 180 school days. The school day for an educationally handicapped pupil in an [eligible] approved private school shall be [commensurate with] equivalent to that in his or her local school district. **Four hours daily of instruction excluding lunch, physical education and extra-curricular activities shall be considered a school day.**

(b) A private school approved for the school year may operate an extended school year program, upon written approval from the Department of Education.

6:28-4.7 Termination [of] or withdrawal from an educational program

Prior to the termination or withdrawal of an educationally handicapped pupil from an [eligible] approved private school, there shall be an individualized education program review conference which shall include participation of appropriate personnel from the approved private school and pupil's parent(s). [t]Two weeks' written [advance] prior notice of such termination or withdrawal shall be given by the parent(s), the sending [public school] district board of education or the approved private school to the other parties involved in [sharing the responsibility for] the education of the [educationally handicapped] pupil.

6:28-4.8 Placement by parents

If an educationally handicapped pupil has available a free, appropriate [public] education offered by a [local school] district board of education the parent(s) chooses to place the pupil in a private school, neither the State nor the [local public school] district board of education [is] shall be responsible for the cost of the private school placement.

SUBCHAPTER 5. AUXILIARY SERVICES FOR NONPUBLIC SCHOOL PUPILS

6:28-5.1 Scope

Chapter 192, Laws of 1977 (N.J.S.A. 18A:46A-1 et seq.), provides auxiliary services for pupils enrolled in nonpublic schools. The auxiliary services consist of compensatory education, supplementary instruction, home instruction[,] and support services for children with limited English-speaking ability.

[6:28-5.2 Definitions

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

"District board of education" means the board of education of the district in which the nonpublic school pupil is domiciled.

"Nonpublic school" means an elementary or secondary school within the State, other than a public school, offering education for grades kindergarten through 12, or any combination of them, wherein any child may legally fulfill compulsory school attendance requirements and which complies with the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352).

"Pupil" means any child between ages five and 20 who is a resident of the State, enrolled full-time in a nonpublic school. A child who boards at a nonpublic school in a district in which his/her parent(s) or guardians are not domiciled shall not be considered a resident of the district but shall be considered a resident of the district in which the parent(s) or guardians are domiciled.

"Auxiliary services" means compensatory education services; supportive services for acquiring communication proficiency in the English language for children of limited English-speaking ability; supplementary instruction services; and home instruction services.

1. "Compensatory education" means preventive and remedial programs in basic communication and computational skills as set forth in N.J.A.C. 6:8-1.1.

2. "Supportive services for acquiring communication proficiency in the English language for children of limited English-speaking ability" means programs in English as a second language.

3. "Supplementary instruction" means instruction provided for a pupil classified pursuant to N.J.S.A. 18A:46-8 as handicapped which is given in addition to the regular instructional program of such pupil as set forth in N.J.A.C. 6:28-2.2(c)1ii.

4. "Home instruction" means individual instruction given in lieu of regular classroom instruction to a pupil who is unable to attend school because of illness or injury as set forth in N.J.A.C. 6:28-1.2.]

6:28-5.[3]2 Responsibilities of the district board of education

(a) Each district board of education shall determine eligibility and provide auxiliary services to nonpublic school pupils between the ages of five and 20 domiciled in the district and enrolled in the nonpublic schools of the State.

(b) The district board of education may contract with public or private agencies, subject to approval by the Commissioner of Education, other than a church or sectarian school, for the provision of the auxiliary services.

(c) The district board of education shall [furnish the] provide auxiliary services, [provided that] however, in any year no district shall be required to make expenditures for the purposes of [N.J.S.A. 18A:46A-1 et seq.] this chapter in excess of the amount of State aid received pursuant to N.J.S.A. 18A:46A-1 et seq. for that year, on an equal basis to pupils enrolled in both public and nonpublic schools.

(d) If the provision of auxiliary services [pursuant to N.J.S.A. 18A:46A-1 et seq.] requires transportation, the district board of education shall provide for such transportation and the cost shall be paid from State aid received by the district [pursuant to N.J.S.A. 18A:46A-1 et seq].

6:28-5.[4]3 Provision of services

(a) [The bases for determining the e]Eligibility of a nonpublic school pupil for auxiliary services shall be determined by criteria equivalent to those used by the district for determining the eligibility of public school pupils for the same service [in accordance with N.J.A.C. 6:8-3.4(a)].

(b) Personnel providing [any] auxiliary services [under N.J.S.A. 18A:46A-1 et seq. must] shall meet the qualifications [required of] for personnel providing the same service in the public schools of the State, including appropriate certification, but shall not be [a member] members of the staff of any nonpublic school.

(c) In [ascertaining] determining the needs of an eligible nonpublic school pupil[s], the [district] board of education shall include consultation with persons who supervise the pupil in the normal learning environment.

(d) Auxiliary services shall be provided only upon the written consent of the parent(s) or guardian in a manner and on forms prescribed by the commissioner.

(e) Auxiliary services shall [only] be provided only in a location determined by the [district] board of education and approved by the [commissioner] county superintendent of schools, except that no such services shall be provided in a church or sectarian school.

1. All buildings, relocatable units, and mobile units in which auxiliary services are conducted shall comply with N.J.A.C. 6:22-1.1 et seq. and 6:22A-1.1 et seq.].

2. Classrooms used on an emergency basis shall comply with N.J.A.C. 6:3-1.17.

3. All classrooms not in public schools and to be used on a permanent basis shall be approved by the [commissioner] **county superintendent of schools** and, where necessary, by the local building official. In making a determination, the [commissioner] **county superintendent of schools** shall take into account the factors set forth in N.J.A.C. 6:3-1.17(b).

4. The determination as to where auxiliary services will be [offered] **provided** will depend upon, but not be limited to, [such factors as] the distance between the public and nonpublic school, safety elements involved in travel[,] and the adequacy of accommodations in public schools and public centers. The [commissioner] **county superintendents of schools** shall approve all such locations, using the aforementioned criteria as a basis for determining where [such] **nonpublic school** pupils can best be served.

5. Public and nonpublic school pupils may be intermingled when such an arrangement provides the service in a more effective and [or] efficient manner.

6. [The boards of education of two or more districts must apply to the commissioner for approval of a joint project to provide one or more of the auxiliary services defined in N.J.S.A. 18A:46-1 et seq.] **Cooperative arrangements between two or more district boards of education to provide auxiliary services shall be approved by the Department of Education.**

(f) District board of education shall comply with all timetables and/or schedules established by the commissioner for the [orderly] implementation of [N.J.S.A. 18A:46A-1 et seq.] **this subchapter.**

6:28-5.[5]4 State aid

(a) Each district's total apportionment of State aid for auxiliary services [defined in N.J.S.A. 18A:46A-1 et seq.] for the succeeding school year shall be determined as follows:

1. The Statewide average cost of providing auxiliary services to public school pupils shall be calculated[;].

2. The number of nonpublic school pupils residing in the district who are expected to receive each auxiliary service shall be determined[;].

3. The Statewide average cost for auxiliary services shall be multiplied by the number of nonpublic school pupils expected to receive each auxiliary service.

6:28-5.[6]5 Fiscal management

(a) All district boards of education shall maintain their nonpublic auxiliary services project accounting on an encumbrance basis **in accordance with procedures and accounts as established by the Division of Finance and Regulatory Services.** [Separate general account control "Nonpublic Auxiliary Services" shall be maintained on the nonpublic auxiliary services activities. The coding of line account expenditures shall be under "Special Projects" No. 1170 group account, "Nonpublic Auxiliary Services." The district board of education must maintain separate distribution costs on each nonpublic auxiliary service activity in the following accounts: Compensatory Education No. 1171, English as a Second Language No. 1172, Supplementary Instruction Services No. 1173 and Home Instruction Services No. 1174.]

[1.] (b) State aid received by the district board of education shall be recorded as regular current expense "Special Project" State aid.

[(b)] (c) Nonpublic auxiliary services expenditure records [will] **shall** be audited locally[. Such audits will be done] as part of the [district board's] regular audit procedures [prescribed by law and regulation] **of the district board of education.** The local audit report [must] **shall** include separate financial schedules or statements identifying receipts and expenditures applicable to each nonpublic auxiliary service fund. All records relating to

expenditures and recipients shall be accessible and intact in accordance with the "Records Retention Schedule for New Jersey School Districts."

6:28-5.[7]6 Procedures relating to noncompliance

[(a)] If the commissioner determines **after a program review and evaluation** that a district board of education is in noncompliance with the provisions of [N.J.A.C. 18A:46A-1 et seq. or its regulations] **this subchapter**, [he/she shall order the district board of education to show cause why corrective action should not be taken] **then all established corrective procedures shall be implemented pursuant to N.J.A.C. 6:8-7 and 6:24.3.**

[(b)] The commissioner shall take appropriate remedial action if, after a plenary hearing, it is determined that such action is necessary.]

6:28-5.[8]7 Reports required

(a) At the close of the school year, the district board of education shall report to the [State] Department of Education on the total costs of each nonpublic auxiliary services activity. In the event that the expenditures incurred by the district board of education were less than the amount of State aid received, the district's State aid in the second subsequent year will be reduced by the amount of the unexpended funds.

(b) At the close of the school year, the district board of education shall submit to the commissioner a report describing the auxiliary services provided by the district board of education. [pursuant to N.J.S.A. 18A:46A-1 et seq.] The report shall be completed in a manner prescribed by the [C]commissioner and shall include, but not be limited to, such information as the type of auxiliary service provided, numbers of nonpublic school pupils served, frequency and/or amount of the services[,] and facilities utilized.

6:28-5.[9]8 Responsibility of the county superintendent of schools

It shall be the responsibility of the county superintendent of **schools** to supervise the implementation of N.J.S.A. 18A:46A-1 et seq. to ensure that the auxiliary services are provided in accordance with law and regulation.

6:28-5.[10]9 Approval of private agencies

(a) [The term "private agency" means any business, enterprise, service, or other private legal entity which has the capability, integrity and reliability to perform any or all of the auxiliary services described in N.J.S.A. 18A:46A-1 et seq.]

(b) Private agencies seeking to provide such auxiliary services by contracting with district boards of education must be approved by the [C]commissioner [of Education] prior to final award of **contracts** by district boards of education.

[(c)](b) Applications for approval shall be reviewed and approved or disapproved in accordance with the following timelines:

1. The application for approval must be submitted by the district board of education to the [C]commissioner prior to award of [bid] **contract.**

2. The [C]commissioner shall notify the district board of education of approval or disapproval within 30 **school** days of submission.

3. The terms of approval shall be for the contract year.

[(d)](c) Approval shall be based on, but not limited to, the following criteria:

1. Submission of a valid certificate of incorporation or certificate of formation, whichever is applicable, certificate of trade or business name, any licenses or permits required by laws, regulations, ordinances in effect with the State, county, or municipality where the private agency conducts its enterprise and provides its services.

2. Submission of a statement of auxiliary services to be offered, and qualifications and performance data which demonstrate competence by the private agency to provide such services.

- 3. [Satisfactory evidence] **Assurance** of an adequate accounting system in accordance with generally accepted accounting principles.
- 4. [Satisfactory evidence] **Assurance** that the private agency has the financial ability, resources, equipment, skills, capability and business integrity necessary to provide such auxiliary services.
- 5. [An a] **Assurance that all persons as are necessary to provide such auxiliary services shall be properly certified, competent and qualified to perform the tasks assigned to them.**
- 6. Office facilities adequate to the needs of the private agency while performing such auxiliary services.
- [(e)](d) Any private agency which is aggrieved in connection with the approval or disapproval process may appeal to the [C]ommissioner [of Education] **for a hearing** in accordance with rules and regulations for filing petitions of appeal set forth in N.J.A.C. 6:24. **Such hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as supplemented by N.J.A.C. 1:1).**

- 6:28-5.[11]10 **Contracts** for services with private agencies
- (a) District boards of education planning to enter into contracts with private agencies must follow applicable regulations for establishing competitive bidding procedures.
 - (b) Specifications for such contracts shall include, but not be limited to, the following:
 - 1. The scope of work or types of services which are to be provided by the private agency;
 - 2. The anticipated number of **nonpublic school** pupils to be served, by type of instructional services;
 - 3. The average class size for each instructional service;
 - 4. The number of hours of instruction to be provided to **nonpublic school** pupils enrolled in each class;
 - 5. The certification, licensure and health requirements which shall be applied to the instructional staff employed by the private agency;
 - 6. A requirement that the private agency submit an instructional plan to include the following areas:
 - i. A system for the identification and diagnosis of learning difficulties or impediments, and a plan to remediate or accommodate these, where identified;
 - ii. The instructional objectives with projected pupil outcomes, to be achieved through the educational services;
 - iii. A list of the curriculum materials and supplies which are to be provided and utilized in the program as a strategy for the general implementation of the program;
 - iv. A proposed scope of duties for each position included by the private agency in the terms of the bid advertisement;
 - v. The evaluation design which shall be used in determining **nonpublic school** pupil progress and the overall success of the program;
 - 7. A requirement that the private agency submit a plan for the collection, maintenance and accessibility of all **nonpublic school** pupil records including diagnostic materials, attendance records and records of pupil achievement;
 - 8. A requirement that the district board of education be provided with copies of the private agency's personnel policies dealing with performance appraisal, general supervision, emergency procedures, and other personnel and operating procedures to be used during the term of the contract;
 - 9. A requirement that the private agency submit a description of its procedures for maintaining up-to-date files of the personnel involved in delivery of services under the contract. Such files shall include the resume of each employee, a copy of the employee's certification or licensure, attendance records, physical examination and health records, as well as any other evaluation or related documents;
 - 10. A requirement that the private agency submit a statement showing the contract cost and method of payment. The statement should include a budget in sufficient detail to allow the district board of education to make appropriate judgments as to costs

- projected by the contract. A provision limiting expenditures for auxiliary services to the amount granted in State aid should also be included, if desired.
- 11. A requirement that the private agency submit a statement containing the location and description of the facility or facilities in which services shall be provided.
- 12. Other requirements the district board of education may determine are desirable.
- (c) Contract specifications must be submitted by the district board of education to the county superintendent of schools for review at least 14 days prior to advertisement. The district board of education shall not advertise the contract specifications until the county superintendent of schools has approved such specifications.

SUBCHAPTER 6. [EXAMINATION] **EVALUATION, CLASSIFICATION AND CORRECTIVE SPEECH SERVICES FOR NONPUBLIC SCHOOL PUPILS**

6:28-6.1 **Scope**
 Chapter 193, Laws of 1977 (N.J.S.A. 18A:46-6, 8, 19.1 et seq.), provides for the identification, [examination] evaluation and classification of potentially handicapped pupils attending nonpublic schools within the State. The Act further provides the services of a certified speech correctionist for each nonpublic school pupil classified as having an articulation disorder requiring such services.

[6:28-6.2 **Definitions**
 The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.
 "Corrective services" as used in N.J.S.A. 18A:46-6, 8, 19.1 et seq. means the services provided by the certified speech correctionist to each nonpublic school pupil classified as having articulation disorder requiring those services. The identification, examination and classification processes are not to be considered as corrective services.
 "District board of education" means the board of education of the district in which the nonpublic school pupil is domiciled.
 "Nonpublic school" means an elementary or secondary school within the State, other than a public school, offering education for grades kindergarten through 12, or any combination of them, wherein any child may legally fulfill compulsory school attendance requirements and which complies with the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352).
 "Pupil" means any child between ages five and 20 who is a resident of the State, enrolled full-time in a nonpublic school. A child who boards at a nonpublic school in a district in which his/her parents or guardians are not domiciled shall not be considered a resident of that district but shall be considered a resident of the district in which the parents or guardians are domiciled.]

6:28-6.[3]2 **Responsibilities of the district board of education**
 (a) The district board of education shall provide for the identification, [examination] **evaluation**, classification and the speech correction services, provided that no district shall be required to make expenditures in excess of the amount of State aid which is received pursuant to N.J.S.A. 18A:46-6, 8, 19.1 et seq., on an equal basis for pupils enrolled in both public and nonpublic schools.
 (b) The district board of education may contract with public or private agencies, subject to approval by the [C]ommissioner [of Education], other than a church or sectarian school, for the provision of the identification, [examination] **evaluation**, and classification of potentially handicapped children and the speech correction services required as a result.
 (c) If the provision of the services [pursuant to N.J.S.A. 18A:46-6, 8, 19.1 et seq.] requires transportation, the district board of education shall provide for such transportation and the cost shall be

paid from State aid received by the district **board of education** pursuant to N.J.S.A. 18A:46-6, 8, 19.1, et seq.

6:28-6.[4]3 Provision of services

[(a) N.J.S.A. 18A:46-6, 8, 19.1 et seq. provides the following for nonpublic school pupils:

1. Identification of potentially handicapped children;
2. Examination and classification of such children;
3. Speech correction services for children classified as communication handicapped.]

[(b)] (a) The bases for determining the eligibility of a **potentially educationally handicapped** nonpublic school pupil for [any of the provisions of N.J.S.A. 18A:46-6, 8, 19.1 et seq.] **identification, evaluation, classification, and speech correction services** shall be criteria equivalent to those used for determining the eligibility of **potentially educationally handicapped** public school pupils for the same services in accordance with N.J.S.A. 18A:46-1 et seq. and N.J.A.C. 6:28[-1.1 et seq].

[(c)] (b) Personnel providing any [service under N.J.S.A. 18A:46-6, 8, 19.1 et seq.] **of the above services** [must] shall meet the qualifications of personnel providing the same service in the public schools of the State, including appropriate certification, but shall not be [a] members of the staff of any non-public school.

[(d)] (c) **Identification, [Examination,] evaluation, classification** and speech correction services shall be provided **only upon** the written consent of the parent(s) or guardian in a manner and on forms prescribed by the commissioner.

[(e)] (d) The [examination] **identification, evaluation** and classification of nonpublic school pupils should be provided in the nonpublic school, except where it is determined by the district board of education and approved by the commissioner that such facilities are limited for the purposes of certain categories pursuant to N.J.S.A. 18A:46-8.

[(f)] (e) All buildings, relocatable units, and mobile units in which speech correction services are conducted shall comply with N.J.A.C. 6:22[-1.1 et seq. and 6:22A-1.1 et seq.].

[(g)] (f) Classrooms used on an emergency basis shall comply with N.J.A.C. 6:3-1.17.

[(h)] (g) All classrooms not in public schools and to be used on a permanent basis shall be approved by the [commissioner] **county superintendent of schools** and, where necessary, by the local building official. In making a determination, the [commissioner] **county superintendents of schools** shall take into account the factors set forth in N.J.A.C. 6:3-1.17(b).

[(i)] (h) The determination as to where speech correction services [will] **shall be** [offered] **provided** [will] **shall** depend upon, but not be limited to, such factors as the distance between the public and nonpublic schools, safety elements involved in travel[,] and the adequacy of accommodations in public schools and public centers. The [commissioner] **county superintendent of schools** shall approve all such locations, using the aforementioned criteria as a basis for determining where [such] **educationally handicapped nonpublic school** pupils can best be served, except that no speech correction services shall be provided in a church or sectarian school.

[(j)] (i) Public and nonpublic school pupils may be intermingled when such an arrangement provides the service in a more effective and/or efficient manner.

[(k)] (j) [The boards of education of two or more districts must apply to the commissioner for approval of a joint project to provide the services defined in N.J.S.A. 18A:46-6, 8, 19.1 et seq.] **Cooperative arrangements between two or more district boards of education to provide services covered by this subchapter shall be approved by the county superintendent of schools.**

[(l)] (k) District boards of education shall comply with N.J.A.C. 6:3-2[.1 et seq.] in the maintenance of the records of nonpublic school pupils receiving services [pursuant to N.J.S.A. 18A:46-6, 8, 19.1 et seq.] **covered by this subchapter.**

[(m)] (l) District boards of education shall comply with [N.J.A.C. 6:28-1.10] **this chapter** concerning [parents' and pupils'] **the rights**

of parents and pupils with respect to basic child study team evaluations conducted pursuant to N.J.S.A. 18A:46-6, 8, 19.1 et seq.

[(n)] (m) District boards of education shall comply with all timetables and/or schedules established by the commissioner for the [orderly] implementation of [N.J.S.A. 18A:46-6, 8, 19.1 et seq.] **this subchapter.**

6:28-6.[5]4 State aid

(a) Each district[']s **board of education's** total apportionment of State aid for [the] **identification, evaluation**, classification and speech correction services [defined in N.J.S.A. 18A:46-6, 8, 19.1 et seq.] for the succeeding school year shall be determined as follows:

1. The district **board of education** average cost per **potentially educationally handicapped** nonpublic school pupil to provide [classification and speech correction] services shall be calculated;

2. The number of **potentially educationally handicapped** nonpublic school pupils residing in the district who are expected to receive each service shall be determined;

3. The district **board of education** average cost per **potentially educationally handicapped** nonpublic school pupil for [classification and speech correction] services shall be multiplied by the number of **potentially educationally handicapped** nonpublic school pupils expected to receive each service.

6:28-6.[6]5 Fiscal management

(a) All district boards of education shall maintain their nonpublic classification and corrective services project accounting on an encumbrance basis **in accordance with procedures and accounts as established by the Division of Finance and Regulatory Services.** [Separate general account control "Nonpublic Classification and Corrective Services" shall be maintained on the nonpublic corrective correction services activities. The coding of line account expenditures shall be under "Special Projects" No. 1180 group account, "Nonpublic Classification and Corrective Services." The district board of education must maintain separate distribution costs on each nonpublic service activity in the following accounts: Examination and Classification No. 1181 and Speech Correction Services No. 1182.]

[1.] (b) State aid received by the district board of education shall be recorded as regular current expense "Special Project" State aid.

[(b)] (c) Nonpublic classifications and [corrective] **speech correction** services expenditure records will be audited locally[. Such audits will be done] as part of the district board's regular audit procedures [prescribed by law and regulation]. The local audit report [must] **shall** include separate financial schedules or statement identifying receipts and expenditures applicable to each nonpublic classification and [corrective] **speech correction** service fund. All records relating to expenditures and receipts shall be accessible and intact in accordance with the "Records Retention Schedule for New Jersey School Districts."

6:28-6.[7]6 Procedures relating to noncompliance

[(a)] If the commissioner determines **after program review and evaluation** that a district board of education is in noncompliance with the provisions of [N.J.S.A. 18A:46-6, 8, 19.1 et seq. or its regulations] **this subchapter**, [he/she shall order the district board of education to show cause why corrective action should not be taken] **then all established corrective procedures shall be implemented pursuant to N.J.A.C. 6:8-7 and 6:24-3.**

[(b)] The commissioner shall take appropriate remedial action if, after a plenary hearing, it is determined that such action is necessary.]

6:28-6.[8]7 Reports required

(a) At the close of the school year, the district board of education shall report to the [State] Department of Education on the total costs of each nonpublic classification and [corrective] **speech correction**

services activity. In the event that the expenditures incurred by the district board of education were less than the amount of State aid received, the district's State aid in the second subsequent year [will] **shall** be reduced by the amount of the unexpended funds.

(b) At the close of the school year, the district board of education shall submit to the [C]commissioner a report describing the classification and [corrective] **speech correction** services provided by the district board of education. [pursuant to N.J.S.A. 18A:46-6, 8, 19.1 et seq.] The report shall be completed in a manner prescribed by the [C]commissioner and shall include, but not be limited to such information as the classification and [corrective] **speech correction** service provided, members of nonpublic school pupils served, frequency and/or amount of the services and facilities utilized.

6:28-6.[9]8 Responsibility of the county superintendent of schools

It shall be the responsibility of the county superintendent of schools to supervise the implementation of N.J.S.A. 18A:46-6, 8, 19.1 et seq. to ensure that the classification and [corrective] **speech correction** services are provided in accordance with law and regulation.

6:28-6.[10]9 Approval of private agencies

(a) [The term "private agency" means any business, enterprise, service, or other private legal entity which has the capability, integrity and reliability to perform any or all of the examination, classification and corrective services described in N.J.S.A. 18A:46-6, 8, and 19.1 et seq.]

(b) Private agencies seeking to provide [such examination] **evaluation**, classification and corrective services by contracting with district boards of education must be approved by the [C]commissioner [of Education] prior to final award of **contracts** by district boards of education.

[(c)] (b) Applications for approval shall be reviewed and approved or disapproved in accordance with the following timelines:

1. The application for approval must be submitted by the district board of education to the commissioner prior to award of [bid] **contract**.

2. The commissioner shall notify the district board of education of approval or disapproval within 30 **school** days of submission.

3. The terms of approval shall be for the contract year.

[(d)] (c) Approval shall be based on, but not limited to, the following criteria:

1. Submission of a valid certificate of incorporation or certificate of formation, whichever is applicable, certificate of trade, or business name, any licenses or permits required by laws, regulations, ordinances in effect within the State, county, or municipality where the private agency conducts its enterprise and provides its services.

2. Submission of a statement of [examination] **evaluation**, classification and corrective services to be offered, and qualifications and performance data which demonstrate competence by the private agency to provide such services.

3. [Satisfactory evidence] **Assurance** of an adequate accounting system in accordance with generally accepted accounting principles.

4. [Satisfactory evidence] **Assurance** that the private agency has the financial ability, resources, equipment, skill, capability and business integrity necessary to provide such examination, classification and corrective services.

5. [An] **Assurance** that all persons are as necessary in providing such [examination] **evaluation**, classification and corrective services shall be properly certified, competent and qualified to perform the tasks assigned to them.

6. Office facilities adequate to the needs of the private agency while performing such [examination] **evaluation**, classification and corrective services.

[(e)] (d) Any private agency which is aggrieved in connection with

the approval or disapproval process may appeal to the commissioner for a **hearing** in accordance with rules and regulations for filing petitions of appeal set forth in N.J.A.C. 6:24. **Such hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as supplemented by N.J.A.C. 1:1).**

6:28-6.[11]10 Contracts for services with private agencies

(a) District boards of education planning to enter contracts with private agencies must follow applicable regulations for establishing competitive bidding procedures.

(b) Specifications for such contracts shall include, but not be limited to, the following:

1. The scope of work or types of services which are to be provided by the private agency;

2. The anticipated number of **nonpublic school** pupils to be served, by type of instructional service;

3. The average class size for each instructional service;

4. The number of hours of instruction to be provided to **nonpublic school** pupils enrolled in each class;

5. The certification and licensure and health requirements which shall be applied to the instructional staff employed by the private agency;

6. A requirement that the private agency submit an instructional plan to include the following areas:

i. A system for the identification and diagnosis of learning difficulties or impediments and a plan to remediate or accommodate these, where identified;

ii. The instructional objectives with projected pupil outcomes, to be achieved through the educational services;

iii. A list of the curriculum materials and supplies which are to be provided and utilized as a strategy for the general implementation of the program;

iv. A proposed scope of duties for each position included by the private agency in the terms of the bid advertisement;

v. The evaluation design which shall be used in determining pupil progress and the overall success of the program;

7. A requirement that the private agency submit a plan for the collection, maintenance and accessibility of all **nonpublic school** pupils records including diagnostic materials, attendance records and records of pupil achievement;

8. A requirement that the district board of education be provided with copies of the private agency's personnel policies dealing with performance appraisal, general supervision, emergency procedures and other personnel and operating procedures to be used during the term of the contract;

9. A requirement that the private agency submit a description of its procedures for maintaining up-to-day files of the personnel involved in delivery of services under the contract. Such files shall include the resume of each employee, a copy of the employee's certification or licensure, attendance records, physical examination and health records, as well as any other evaluation or related documents;

10. A requirement that the private agency submit a statement showing the contract cost and method of payment. The statement should include a budget in sufficient detail to allow the district board of education to make appropriate judgments as to costs projected by the contract. A provision limited expenditures for [examination] **evaluation**, classification and corrective services to the amount granted in State aid should also be included, if desired;

11. A requirement that the private agency submit a statement containing the location and description of the facility or facilities in which services shall be provided;

12. Other requirements the district board of education may determine are desirable.

(c) Contract specifications must be submitted by the district board of education to the county superintendent of schools for review at least 14 days prior to advertisement. The district board of education shall not advertise the contract specifications until the county superintendent of schools has approved such specifications.

SUBCHAPTER 7. APPROVED PRIVATE CLINICS AND AGENCIES

6:28-7.1 Approval procedure for clinics and agencies
 (a) **Clinics and agencies approved by the Department of Education are organizations which provide child study team diagnostic services to district boards of education. These organizations may also provide therapeutic services limited to occupational therapy, physical therapy and speech correction. Clinics and agencies under contract with district boards of education are independent from district boards of education, county boards of special services, school districts, jointure commissions, educational services commissions, regional day school operated by the Department of Education and day training centers operated by the Department of Human Services.**

[(a)] (b) In [furnishing] **providing** services pursuant to these [regulations] **rules**, private clinics and agencies [must] **shall** be approved by the [Bureau] **Department** of [Special] Education [and Pupil] Personnel Services. [Private clinics and agencies providing health or medical services must be approved, also, by the State Department of Health.]

[(b)] (c) [Approved] **Private** clinics and agencies **approved by the Department of Education** shall provide services [in] **that** conform[ance] with the requirements of [these regulations] **this chapter**.

6:28-7.2 [Approval r]Requirements for approval of private clinics and agencies

(a) [Each applicant] **Private clinics and agencies seeking approval shall [must show proof of] prove governance by private ownership, proprietorship, partnership or [of] incorporation and shall maintain [an] established [location] business addresses within the State of New Jersey** in which [to conduct diagnostic evaluations] **services shall be provided.**

[(b)] Each applicant shall list the names of the professionals to be employed.]

[(c)] (b) [Each] **Private clinics and agencies** shall file [required] documents [with] **as required by** the [Bureau] **Department** of [Special] Education [and Pupil Personnel Services] according to established procedures for approval and annual reappraisal.

[(d)] (c) Each person providing services in an approved **private clinic and agency** shall be **appropriately certified and registered in the office of the county superintendent of schools in which the clinic or agency is located** [or licensed for the professional functions he or she performs].

[(e)] Approval of individual professionals working in an approved clinic or agency is limited to the provision of services within the specified clinic or agency.]

(d) **Appropriate clinic and agency personnel shall be available to the public schools during the hours the public schools are in session.**

(e) **Out-of-state private clinics and agencies providing diagnostic services shall be approved first by the appropriate state agency of the state in which the clinics and agencies are located.**

(f) [Each] **Approved private clinics and [agency] agencies** providing health or medical services shall furnish proof of approval by the State Department of Health.

SUBCHAPTER 8. [REGIONAL OR COUNTY] SPECIAL EDUCATION INTERMEDIATE [EDUCATIONAL] UNITS

6:28-8.1 [Scope] General requirements

(a) [Regional or county educational units] **Special education intermediate units** shall include[, but not be limited to,] county boards of special services, jointure commissions[,] and educational services commissions.

[6:28-8.2 General requirements]

[(a)] (b) [Regional or county educational units] **Special education intermediate units** providing services to educationally handicapped pupils shall be subject to the requirements of N.J.S.A. 18A:46-1 et seq. and [these regulations] **this chapter**.

[(b)] (c) The State Board of Education, the [(C)]**commissioner** [of Education], **and** the [Office of the C]county [S]superintendent of [S]schools [and the Bureau of Special Education and Pupil Personnel Services] shall be notified in [advance] **writing** of the **intent** to establish[ment of regional or county edcational units] **a special education intermediate unit** which will provide services to educationally handicapped pupils.

6:28-8.[3]2 Planning of educational programs

(a) Programs for educationally handicapped pupils in [regional or county educational units] **special education intermediate units** shall be planned jointly with [local school] **the participating district boards of education** personnel and **shall include opportunities for [the integration of the] educationally handicapped pupils to participate** with [the] **educationally nonhandicapped pupils** in educational and social activities. When such [integration] **participation** is considered impossible or unfeasible, [this contention] **it** shall be reported to and reviewed by the [Office of the C]county [S]superintendent of [S]schools and the **Department** [Bureau] of [Special] Education [and Pupil Personnel Services].

(b) Special consideration shall be given to the development of career and life skills of the **educationally handicapped** pupils enrolled in **special education intermediate units**.

(c) Annual approval by [of] the [Commissioner of Education] **Department of Education through the county superintendent of schools [is] shall be** required for expanding or decreasing [of] programs or services to educationally handicapped pupils in [regional or county educational units] **special education intermediate units**.

[(d)] Pupil enrollment and courses of study in a county board of special services school district shall be regulated by the New Jersey Department of Education in accordance with the provisions of N.J.S.A. 18A:46-32 and 33.]

6:28-8.[4]3 Procedures for approval

(a) A program plan shall be forwarded **by the special education intermediate unit** to the [Commissioner of Education, the Office of the C]county [S]superintendent of [S]schools and the [Bureau] **Department** of [Special] Education [and Pupil Personnel Services] for approval at least three months prior to the initiation of programs for educationally handicapped pupils [in regional or county educational units].

(b) The program plan shall include **the following**:

1. A [survey and] needs assessment indicating the number of classified pupils to be served in the program by **category of educational handicap, racial and ethnic background**, sex and age and the present educational programs and resources both public and private serving or available to these **educationally handicapped** pupils[;].

2. A [program]rationale [indicating] **for the program including** the desirability and feasibility for each new program[;].

3. The projected program for each **group of educationally [handicapping] handicapped pupils with the same handicapping** condition [to be served, which] shall include **the following**:

i. A [descriptive] list of the objectives of the program;

ii. Organizational structure, including projected **number of** personnel by title;

iii. Administrative and program policy and procedures;

iv. **The [N]nature and scope of the program [or] and** services to be offered and the number and type of **educationally handicapped** pupils to be served;

v. A [D]description of the proposed [curricula] **curriculum** [in terms of objectives and content.];

vi. Precautions for safety, health and welfare when pupils with a variety of handicapping conditions participate in common educational activities.

(c) The [Commissioner of Education] **Department of Education** [with the approval of the State Board of Education] shall determine if such programs are needed[, are appropriate and are not] or in conflict with existing or planned local, county or State programs.

(d) The [Commissioner of Education] **Department of Education** shall notify the [respective] **prospective special education intermediate unit of its approval decision** [the decision of the State Board of Education] no later than two months after the receipt of the application.

(e) An appeal of the decision by the Department of Education shall be made to the State Board of Education pursuant to N.J.A.C. 6:2-1.

6:28-8.[5]4 Responsibility for **educationally handicapped pupils**

(a) The [classification] **development of the individualized education program and classification of an educationally handicapped pupil[s] for initial placement in [regional or county educational units] a special education intermediate unit** shall be the responsibility of the **board of education of the local [public] school district[s]** in which the pupil[s] legally resides.

(b) [Recommendation for placement of pupils into such programs shall be the joint responsibility of the professional personnel of the local school district and the regional or county educational unit.] **Contractual agreements shall be made between district boards of education regarding educationally handicapped pupils which specify responsibility for providing instructional programs and child study team services.**

(c) The placement of [individual] **an educationally handicapped pupil[s]** in [regional or county educational units is] **a special education intermediate unit shall be** subject to [the advance] **prior approval from** [of the Office of the County Superintendent of Schools and] the [Bureau] **Department of [Special] Education [and Pupil Personnel Services] through the county superintendent of schools.**

(d) [The instructional program of a pupil enrolled in a regional or county educational unit shall conform to the individualized education program developed by the pupil's local school district. The annual review and revision of the individualized education program shall include participation by appropriate personnel of the regional or county education unit engaged in the education of the pupil.] **A copy of the annual review and/or revision of the individualized education program of a pupil enrolled in a special education intermediate unit shall be forwarded to the pupil's local school district.**

6:28-8.[6]5 Tuition rates for [regional or county educational] **special education intermediate [educational] units**

(a) Tuition rates for [pupils accepted by] **educationally handicapped pupils placed in special education intermediate [regional or county educational] units** shall be based upon [total] costs for the education of such pupils according to the same formula used by local [public] school districts which receive pupils from other local school districts.

(b) **Tuition rates for educationally handicapped pupils placed in county boards of special services districts shall be determined annually by the Department of Education, Division of Finance and Regulatory Services.**

6:28-8.[7]6 Assessment of constituent districts by jointure commissions for special education

(a) Assessments by jointure commissions shall be based on the total enrollment of pupils in the public schools of the constituent districts.

(b) Assessments shall be paid according to a plan to which the

constituent boards agree at the time of becoming members. Such plan shall include dates for payment, auditing of accounts, reports to constituents and provisions for flexibility in financing due to increased enrollments in constituent districts.

SUBCHAPTER 9. SPECIAL EDUCATION PROGRAMS OPERATED BY OR UNDER CONTRACT WITH THE [STATE] DEPARTMENT OF EDUCATION

6:28-9.1 [Scope] **General requirements**

(a) The requirements of [these rules and regulations] **this chapter** shall apply to special education programs for educationally handicapped pupils operated by the [State] Department of Education.

[6:28-9.2 General requirements]

[(a)] (b) Special education programs operated by **or under contract with** the [New Jersey State] Department of Education shall be [subject to the requirements of] **in conformance with** N.J.S.A. 18A:46-1 et seq. and [these regulations] **this chapter**.

[(b)] (c) Special education programs operated by **or under contract with** the [State] Department of Education shall be monitored, evaluated and approved by **representatives of the [Bureau] Department of [Special] Education [and Pupil Personnel Services].**

(d) Special education programs operated by or under contract with the Department of Education shall include the Marie H. Katzenbach School for the Deaf, regional day schools and any other Department of Education program in which educationally handicapped pupils are enrolled.

6:28-9.[3]2 Responsibility for pupils

(a) [Classification] **The determination of an educationally handicapped pupil's[s] [placed] placement in a special education program[s] operated by or under contract with** the [State] Department of Education shall be the responsibility of the [local public school] district[s] **board of education** in which the pupil[s] legally resides.

(b) The instructional program of [a] **an educationally handicapped pupil in a State operated or contracted program** shall conform to the individualized education program developed by the pupil's local school district. The annual review and revision of the individualized education program shall include participation by appropriate personnel engaged in the education of the pupil and **by the parent(s).**

(c) **Each district board of education shall determine which educationally handicapped pupils are in need of educational services provided by the Department of Education. When a pupil is being considered for placement into a program operated or contracted by the Department of Education, the district board of education shall file an application for approval with the county superintendent of schools. This application shall be approved by the Department of Education prior to the placement of the educationally handicapped pupil.**

(d) The district board of education shall **pay tuition to the Department of Education or to the contracted agency for all educational services provided to the educationally handicapped pupil. Transportation costs shall be the responsibility of the district board of education responsible for the pupil.**

(e) **At least three progress reports a year shall be sent to the responsible district board of education.**

(f) **When an educationally handicapped pupil completes his or her individualized education program, the pupil shall receive the diploma of the district board of education in which the pupil legally resides.**

6:28-9.3 Program budgets

Each special education program operated by or contracted by the Department of Education shall annually submit to the Department of Education written documentation pertaining to the budget and operation of the program, including the projected tuition rates to be charged in the following school year. Such documentation shall be submitted in accordance with a schedule and on forms required by the Department of Education. The program's budget shall be approved annually by the Division of Finance and Regulatory Service.

6:28-9.4 Review of programs

(a) The Department of Education shall annually review the special education programs which it operates and shall make appropriate changes in age ranges of educationally handicapped pupils served, curricula, staff and facilities in order to meet regional or statewide shifts in the population of educationally handicapped pupils and the continued needs of unserved educationally handicapped pupils.

(b) The Department of Education shall annually review the special education programs provided by contracting agencies to determine that contractual obligations for provisions of services are met. In cases where an agency is not meeting its contractual obligation, the agency shall develop a remedial plan to correct the deficiencies and submit it to the Department of Education for approval.

SUBCHAPTER 10. [SPECIAL EDUCATION PROGRAMS OPERATED UNDER COOPERATIVE ARRANGEMENTS AMONG STATE AGENCIES] STATE FACILITIES EDUCATION

[6:28-10.1 General requirements

(a) All state operated special education programs shall be subject to N.J.S.A. 18A:46-1 et seq. and these regulations.

(b) All state operated special education programs for educationally handicapped pupils shall be monitored, evaluated and approved by the Bureau of Special Education and Pupil Personnel Services.

(c) A state agency may expand or decrease programs only upon application to and approval by the Commissioner of Education.]

[6:28-10.2 Planning of educational programs

(a) Programs shall be planned and implemented in accordance with the provisions of these regulations.

(b) Special consideration shall be given to the development of career and life skills for pupils enrolled.]

[6:28-10.3 Procedures for the approval of State operated programs submitted by State Agencies

(a) A program plan shall be forwarded to the Commissioner of Education for approval at least three months prior to the initial date of implementation of the program.

(b) Program plans shall include:

1. A needs assesment indicating the number of classified pupils to be served in the program and resources both public and private serving or available to these handicapped pupils;
2. A program rationale indicating the desirability and feasibility for each program to be administered by the agency;
3. The projected program for each area of handicap to be served, which shall include:
 - i. A descriptive list of the objectives of the program;
 - ii. Organizational structures, including projected personnel by title;
 - iii. Program policy and procedures which include processes for identification and admission;
 - iv. Description of proposed curricula in terms of objectives and content, including knowledge, skills, attitudes and values;

v. The type of least restrictive environment in which the educational programs will be operated.

(c) The Commissioner of Education shall determine if such program needs are appropriate and are not in conflict with existing or planned local, county or state programs.

(d) The Commissioner shall notify the respective state agency of his/her decision no later than two months after the receipt of the program plan.]

[6:28-10.4 Responsibility for classification of pupils

Classification of handicapped pupils in programs provided under cooperative arrangements between state agencies shall be the responsibility of the local public school districts in which the pupils legally reside.]

[6:28-10.5 Eligible for day training requirements

(a) All new referrals to the State Department of Human Services shall be made solely by the local school district basic child study team following evaluation and classification of the pupil as eligible for day training. An individualized education program shall be developed cooperatively by the local district child study team, the pupil's parent, curriculum specialists from the component in which the pupil will be served and other appropriate specialists of the Division of Mental Retardation.

(b) All pupils enrolled in eligible for day training programs prior to the adoption of these regulations by the State Board of Education shall be considered as eligible for day training by the local public school districts in which they legally reside.

(c) The Division of Mental Retardation, State Department of Human Services, shall verify to the State Department of Education that programs for eligible day training pupils provided in contracted centers meet all criteria requirements established for eligible for day training pupils.

(d) All educational programs for severely and profoundly mentally retarded pupils in state residential facilities shall provide services commensurate with those required in state day training centers.

(e) Requests by institutions, parents or social services agencies for the classification of pupils as eligible for day training shall be directed to the pupil's local school district child study team.

(f) Pupils under the jurisdiction of the State Department of Human Services in out-of-state institutions shall be classified by their local public school district child study team. Individualized education programs shall be incorporated within the pupil's Individual Habilitation Plan.

(g) The Individual Habilitation Plan of the State Department of Human Services shall form a basis for the individualized education program of pupils classified as eligible for day training. The State Department of Human Services, Bureau of Day Training, shall develop and implement the basic curricula of pupils classified as eligible for day training.

(h) All day training eligible programs shall be monitored, evaluated and approved by the Bureau of Special Education and Pupil Personnel Services.]

6:23-10.1 General requirements

(a) The requirements of this chapter shall apply to all educational programs in which the Department of Corrections or the Department of Human Services places pupils, except as otherwise provided in this chapter.

(b) All general education rules apply to educational programs in which the Department of Corrections or the Department of Human Services places pupils, except as otherwise provided in this chapter.

(c) All educationally nonhandicapped pupils in State facilities shall receive an educational program based on an individualized student improvement plan. All educationally handicapped pupils shall receive an educational program based on an individualized education program. A pupil who has an individualized habilitation plan or an individual treatment plan

shall have the individualized education program or the individualized student improvement plan incorporated into the total treatment plan.

(d) All State-operated educational programs and services for pupils in State facilities shall be approved, reviewed and evaluated by the Department of Education.

(e) A State agency may initiate, expand or decrease educational programs and services only upon notification to and approval of the Department of Education.

(f) Each State facility shall provide an educational program and services to each eligible school-age pupil commensurate with those provided to a pupil in a local school district.

(g) An educational program shall be designed and implemented to meet the particular academic, emotional and social needs of a pupil in each specific type of facility. It shall take into account the pupil's age; previous educational experience; current achievement level; native language if other than English; social and environmental needs; mental, physical or emotional condition and probable duration of placement in that facility.

(h) An educational program shall be scheduled for a full school day. The following components shall be scheduled for pupils in all State facilities: instruction in communication and mathematical skills; prevocational, vocational and career education; physical education; family life education; social and interpersonal skills; adult living and consumer skills; and creative art education.

(i) All educational activities shall include, but not be limited to, the following components:

1. Goals and objectives related to pupil needs;
2. Strategies and resources to meet goals and objectives;
3. A written curriculum;
4. Pupil evaluation procedures and timelines;
5. Program evaluation, procedures and timelines.

(j) The length of time of the educational program of a pupil shall be specified in the individualized education program or individualized student improvement plan.

(k) Activities shall not be scheduled that conflict with educational programs. Pupils shall not be excused from attending educational programs except for reasons of illness, religious observance, court appearance or other compelling personal circumstances. Attendance is compulsory for all pupils.

(l) Educational programs shall be provided for all pupils between the ages of three and 21 who do not hold a high school diploma or who have not met the goals of their individualized education program, except a pupil age 16 or above who waives this right. A waiver may be revoked at any time by the pupil. For a pupil below the age of 18, a waiver is not effective unless accompanied by the consent of the parent(s).

(m) All educational records shall be maintained in files separate from juvenile justice and other institutional records required to be safeguarded from public inspection by N.J.S.A. 2A:4-65.

(n) Records must be kept and transmitted to public school districts in a manner to assure credit for work completed. District boards of education shall grant appropriate credit and diplomas for educational work completed by pupils while enrolled in State facilities.

(o) The following educational program options shall be considered in determining the appropriate placement of a pupil:

1. State-operated, State-contracted, local school districts, county special services districts, educational services commissions and jointure commission placements. Placement shall be in the least restrictive educational environment of a pupil.

2. A State facility may recommend placement of a pupil in a local school district, if the pupil is capable of participating in

an educational program offered by that district board of education. The district board of education may accept or reject the pupil. If accepted, tuition shall be paid by the State facility to the district board of education.

(p) Educational programs shall be provided in physical locations separate from sleeping areas, except where appropriate for instructional or medical reasons. School facilities shall comply with rules pursuant to N.J.A.C. 6:8-4.8(b).

(q) Post-release educational plan shall include, but not be limited to, the following:

1. At least 60 school days prior to release or discharge or as soon as notification is made, State facilities shall prepare post-release educational plans which include the elements of an individualized education program or an individualized student improvement plan.

2. When the placement following release from the State facility is known, educational personnel from that placement area may be invited to participate in the preparation of the post-release educational plan.

(r) School discipline requirements shall include, but not be limited to, the following:

1. A pupil shall not be punished by expulsion from educational programs.

2. A pupil shall be suspended in accordance with policies established by the Department of Corrections and Human Services and approved by the Department of Education.

3. A handicapped pupil shall not be suspended or expelled from an educational program for manifestations or consequences of the pupil's handicap, except on an emergency basis to prevent imminent, severe and ongoing danger of injury to the pupil or others, or of disruption of the educational process.

(s) All appropriate certification that is required other than classroom teacher of the handicapped shall be determined by the directors in the respective offices of education in the Department of Corrections and the Department of Human Services. The appropriateness of certification will be monitored by the Department of Education. The monitors will evaluate whether or not appropriately certified personnel accommodate pupil and program needs.

6:28-10.2 Educational plan

(a) Each State facility shall have an annual educational plan, which shall include both a program and a fiscal component which encompasses all State and Federal educational funding sources.

1. The program component of the annual educational plan shall be submitted on a form provided by the Department of Education and shall include, but not be limited to, the following:

- i. A needs assessment indicating the number of pupils to be served in the program by type of handicap, if any, sex and age and the present educational program and resources, both public and private, available to a pupil;

- ii. A rationale indicating the desirability and feasibility for each program to be administered by the Departments of Corrections and Human Services;

- iii. The admission criteria for each educational program;

- iv. A program for each area of educationally handicapped or educationally nonhandicapped pupil to be served, which includes the following:

- (1) A descriptive list of the objectives of the program;

- (2) An organizational structure, including projected personnel by title and certification held;

- (3) A description of proposed curricula in terms of objectives and content;

- (4) A description of facilities in which the program shall be operated.

- v. Pupil and program evaluation plans.

2. The fiscal components shall be consistent with the program component of the annual educational plan and shall be submitted on a budget statement form provided by the Department of Education that shall include, but not be limited to, the following:

- i. A separate budget statement for each educational program in each State facility;
- ii. A State facility educational budget statement;
- iii. A detailed narrative to justify each amount on the facility educational budget statement;
- iv. A brief statement describing departmental educational program priorities;
- v. A departmental educational budget statement.

(b) The commissioner shall approve the annual educational plan to assure that it is appropriate and is not in conflict with any existing planned, local, county or State program or in conflict with statute, code or policy.

(c) The commissioner shall notify the commissioners of the Departments of Corrections and Human Services when the annual educational plan is approved or unapproved.

(d) If the plan is unapproved, the commissioners of the Departments of Corrections and Human Services shall submit a revised annual education plan specifying how they will correct any deficient areas.

(e) The commissioner shall notify the commissioners of the Departments of Corrections and Human Services if the revised annual educational plan is acceptable or unacceptable. The Department of Education shall provide technical assistance to the Department of Corrections and the Department of Human Services for any plan which requires further revision.

(f) An educational plan for a new or revised educational program of service shall be forwarded to the Commissioner of Education for approval three months prior to the initial date of implementation.

6:28-10.3 Eligibility to receive State funds

(a) The commissioners of the Departments of Corrections and Human Services shall submit annually to the Department of Education the resident enrollment of pupils in State facilities on the last school day of September.

(b) The Commissioner of Education shall notify the commissioners of the Departments of Corrections and Human Services of the entitlement for the following fiscal year under the State Facilities Education Act.

(c) The Department of Education shall forward first-quarter State Facilities Education Act funds to the Department of Corrections and the Department of Human Services by July 1. All subsequent funding for the fiscal year shall be contingent upon acceptance of the annual educational plans by the Commissioner of Education.

(d) The determination of the district of residence for funding purposes shall be in accordance with N.J.S.A. 18A:7B-12.

6:28-10.4 Program review

(a) The Department of Education shall review all State facilities educational programs for compliance with statute, code and their approved annual educational plan.

(b) The program review process shall include, but not be limited to, the following:

1. An on-site inspection of each facility to determine adequacy and appropriateness of physical plant, equipment, instructional materials and the existence of qualified staff.

2. A review of a sample of individual records of pupils in State facilities to determine that evaluations, individualized education programs or individualized student improvement plans, attendance records and other pertinent items are in compliance with law, internally consistent and educationally sound.

3. A review to determine that a pupil is receiving the

educational program and services specified in the individualized education program or the individualized student improvement plan.

(c) After each program review is completed, a program review report shall be written and sent to the director of the facility.

(d) If a facility receives a program review report that indicates a program is deficient, the Commissioner of Education shall direct the commissioners of the Departments of Corrections and Human Services to submit a remedial plan to correct the deficiencies.

(e) The remedial plan shall be submitted on a form provided by the Department of Education and shall include, but not be limited to, the following:

- 1. Objectives and strategies for complying with each item cited as deficient;
- 2. Target dates for correcting the deficiency;
- 3. Target population, resources needed and products.

(f) The Commissioner of Education shall notify the commissioners of the Departments of Corrections and Human Services that a remedial plan is acceptable or unacceptable.

(g) The Department of Education shall review each State facility education program that requires a remedial plan for compliance.

(h) All educational programs and fiscal information shall be available for audit by the Department of Education.

6:28-10.5 Identification, determination of eligibility for program and development of an individualized education program

(a) The district of residence board of education shall be responsible for evaluation and determination of eligibility for special education prior to placement of a pupil between the ages of three and 21 in a facility operated by or under contract to the Department of Corrections or the Department of Human Services.

(b) The State facility child study team shall be responsible for the identification, evaluation, determination of eligibility for special education, development and implementation of the individualized education program and annual review when a pupil in a State facility has not been determined eligible for special education.

(c) When an educationally handicapped pupil is placed in a facility operated by or under contract to the Department of Corrections or the Department of Human Services and is enrolled in an educational program, the State facility is responsible for implementing the intent of the individualized education program agreed to by the pupils's district of residence and the parent(s). Within 30 school days, the Department of Human Services or the Department of Corrections child study team, with the approval of the parent(s), may alter the individualized education program.

(d) The following provisions shall apply to a pupil determined "eligible for day training", who will attend a Day Training Center.

1. Upon determining a pupil eligible for day training, the district of residence child study team shall:

- i. Refer the pupil to the Division of Mental Retardation of the Department of Human Services;
- ii. Write an individualized education program in accordance with this chapter;

2. The Division of Mental Retardation shall provide an appropriate program and services based on the pupil's individualized education program.

3. A program for an "eligible for day training" pupil need not be limited to those offered in the day training center nearest to the pupil's residence.

(e) The following provisions shall apply to the operation of an educational program for a pupil in a day training facility:

1. All placements to a day training program shall be made

following the district of residence child study team evaluation and determination of the pupil as eligible for day training.

2. The day training center is responsible for carrying out the individualized education program agreed to by the district of residence, the day training center and the parent(s).

3. The instructional guide section of the individualized education program shall be written by a professional representative(s) from the day training center with the assistance of a member of the district of residence child study team.

4. The annual review, a reevaluation and a revision to the individualized education program shall be the responsibility of the district of residence with participation of the day training center staff and the parent(s).

5. The appropriate educational placement of a pupil in a program for an "eligible for day training" pupil in facilities for the retarded may be determined by a combination of chronological age, intellectual and social functioning and medical condition. In such classes, the age range of pupils may exceed four years. If a pupil is placed in a class in which he or she is not within the four-year age range of the other pupils, the rationale for placement shall be noted in the individualized education program.

(f) An educational program for an "eligible for day training" pupil in a State residential facility shall be commensurate with those in a day training center.

6:28-10.6 Individualized student improvement plans for educationally nonhandicapped pupils

(a) When a pupil is found to be educationally nonhandicapped and is enrolled in an educational program operated by or under contract to the Department of Corrections or the Department of Human Services, the following provisions shall apply:

1. Any pupil who is educationally nonhandicapped shall have an educational program based on an individualized student improvement plan developed by the facility education staff.

i. An individualized student improvement plan shall be written for each educationally nonhandicapped pupil within five school days of admission and shall be implemented promptly;

ii. The individualized student improvement plan shall contain the following elements in addition to the elements of an instructional guide pursuant to this chapter:

(1) A description of the pupil's current educational strengths and weaknesses, based upon current evaluations, tests and reports;

(2) A statement of educational goals and objectives for the current school year;

(3) A description of the educational program and services needed to enable the pupil to attain the goals and objectives, taking into account the pupil's age, previous educational experience, current achievement level, native language, if other than English, and social and environmental needs;

(4) A description of how the needed program and services are to be provided, including instructional strategies, materials and resources;

(5) A procedure and timetable for evaluations to determine whether the pupil has attained the goals and objectives.

(b) An individualized student improvement plan shall be developed by the educational staff of the facility, and when appropriate, with the participation of the pupil. The pupil's parent(s) shall be notified of and invited to participate in the development of the individualized student improvement plan, but the parent(s) approval is not a pre-condition to implementation of the individualized student improvement plan.

(c) The parent(s) shall be informed that an individualized student improvement plan has been developed for the pupil and is available for them to review upon request.

(d) The parent(s) or the pupil who objects to the provisions of an individualized student improvement plan or its implementation may invoke the administrative review procedures pursuant to N.J.A.C. 6:28-10.7(c) and the due process procedures pursuant to N.J.A.C. 6:28-1.8.

(e) The individualized student improvement plan shall be reviewed and revised annually as determined by the staff of the State facility.

(f) Any pupil placed on an emergency basis in a child treatment center or psychiatric hospital or whose anticipated stay is no more than 15 school days shall have an individualized student improvement plan developed and implemented by the facility education staff.

(g) Where a pupil has a court-appointed attorney, this attorney shall be permitted to participate in all meetings at which the parent(s) is permitted to participate and shall receive all notices which are sent to the parent(s) concerning the pupil's education.

(h) Class size for all pupils enrolled in an educational program other than those described in N.J.A.C. 6:28-3 shall not exceed the following:

i. Residential youth centers – 10 pupils;

ii. Child treatment center or psychiatric hospital – 10 pupils;

iii. Training school or correctional facility - 10 pupils.

(i) The above maximum class sizes may be increased by no more than one-third by the addition of teacher aides or auxiliary teachers upon prior written approval from the Department of Education.

6:28-10.7 Due process

(a) The provision of due process pursuant to N.J.A.C. 6:28-1.8 shall be applicable to all educationally nonhandicapped pupils and educationally handicapped pupils enrolled in educational programs in facilities operated by or under contract to the Department of Corrections and the Department of Human Services.

(b) A due process request can not be made regarding placement of a pupil by a State agency in a facility operated by or under contract to the Department of Corrections and the Department of Corrections and the Department of Human Services.

(c) An exception to the administrative review process described in N.J.A.C. 6:28-1.8(c) is as follows:

i. A request for an administrative review shall be made directly to the Department of Corrections or the Department of Human Services:

(1) The Department of Corrections and the Department of Human Services shall develop written administrative review procedures commensurate with those provided by the Department of Education under the provisions of this chapter.

(2) The written procedures developed by the Department of Corrections and the Department of Human Services shall be reviewed for approval by the Department of Education.

6:28-10.8 Surrogate parents

(a) The responsibility for providing a surrogate parent(s) shall be applicable to all educationally nonhandicapped and handicapped pupils enrolled in educational programs in facilities operated by or under contract to the Department of Corrections and the Department of Human Services.

(b) The Department of Corrections and the Department of Human Services shall develop written procedures which include selection, training and supervision of a surrogate parent(s).

(c) The written procedures developed by the Department of Corrections and the Department of Human Services shall be reviewed for approval by the Department of Education.

ENVIRONMENTAL PROTECTION

(a)

BOAT REGULATION COMMISSION

Boating Regulations; Water Skiing

Proposed Amendment: N.J.A.C. 7:6-1.37

Authorized By: Robert E. Hughey, Commissioner,
 Department of Environmental Protection, and Boat
 Regulation Commission, Kenneth Husted, Chairman.
 Authority: N.J.S.A. 13:1D-9, and specifically N.J.S.A.
 12:7-34.49.
 DEP Docket No. 021-83-04.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Michael F. Catania, Director
 Office of Regulatory Services
 CN 402
 Trenton, NJ 08625

The Department of Environmental Protection thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-239.

The agency proposal follows:

Summary

The New Jersey Boat Act of 1962 (P.L. 1962, c. 73 as amended, N.J.S.A. 12:7-34.36 et seq.) authorizes the Boat Regulation Commission, with the approval of the Commissioner of Environmental Protection, to promulgate rules and regulations governing the inspection, operation, equipping, anchorage, racing and safety of vessels in State waters (see N.J.S.A. 12:7-34.39). Pursuant to this authority, the Commission has promulgated rules concerning the operation and use of ski boats and ski equipment. The proposed amendment to those rules allows the Commission to relax their application for public entertainment events on privately-owned lakes.

Social Impact

The adoption of this proposal would afford the public greater entertainment options on private lakes.

Economic Impact

There will be no economic impact, beneficial or adverse, from the adoption of this proposal.

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

7:6-1.37 Water skiing

(a) All operations of power vessels towing ski or aquaplane riders while underway must at all times keep at least 100 feet from any shore, wharf, pier, bridge structure, abutment or persons in the water. In passing another boat, the operator thereof must keep at least 100 feet distance from any other craft.

(b) All power vessels towing ski or aquaplane riders must have a crew of at least two persons.

(c) The operator of such power vessel shall operate the boat in such

a manner as to insure its safe operation and the second crew member shall tend the ski or aquaplane rider.

(d) Tow lines shall not be more than 75 feet in length.

(e) Water-skiing or aquaplaning or towing of skiers or aquaplanes will be permitted only during the hours between sunrise and sunset.

(f) The term "water-skiing" shall be defined as anything with a rider, being towed behind a power vessel by means of a tow rope or line, except another vessel.

(g) **The Commission may, upon application, waive any one or more of the above subsections for events of public entertainment on any wholly owned private lake, provided that it finds the event to be consistent with the interests of boating safety.**

(b)

DIVISION OF WATER RESOURCES

Water Quality Management Planning and Implementation Process

Proposed New Rule: N.J.A.C. 7:15

Authorized By: Robert E. Hughey, Commissioner,
 Department of Environmental Protection.
 Authority: New Jersey Water Quality Planning Act
 (N.J.S.A. 58:11A-1 et seq., specifically 58:11A-2 and
 58:11A-9).
 DEP Docket No. 022-83-04.

Public hearings concerning this proposal will be held at the following times and locations:

June 1, 1983
 7:30 P.M. - 10:00 P.M.
 Morris County Freeholders
 Meeting Room
 Ann Street
 Morristown, NJ

June 6, 1983
 2:00 P.M. - 5:00 P.M.
 Department of Environmental
 Protection Conference Room
 Arctic Parkway
 Trenton, NJ

June 7, 1983
 7:30 P.M. - 10:00 P.M.
 Vineland Council Chambers
 7th and Wood Streets
 Vineland, NJ

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

George Horzempa, Chief
 Bureau of Planning and Standards
 Department of Environmental Protection
 CN 029
 Trenton, NJ 08625

The Department of Environmental Protection thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-238.

The agency proposal follows:

Summary

The proposed new rule was prepared pursuant to the New Jersey Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.) which authorizes the Department of Environmental Protection to develop and implement water quality management programs to deal with the water pollution problems in the State. The statute further authorizes the Department to establish a Continuing Planning Process to aid areawide planning and to incorporate Water Quality Management Plans into a comprehensive and cohesive Statewide program directed toward the achievement of water quality objectives.

Twelve areawide Water Quality Management Plans were developed and adopted. Five of these plans were prepared by the Department and the other seven were prepared by designated planning agencies (consisting of either county or regional agencies). The seven designated planning areas are Mercer County, Middlesex County, Ocean County, Cape May County, Atlantic County, Sussex County and the Tri-County area (Burlington, Gloucester, and Camden counties). In each area the county government is the designated planning agency, except for tri-County for which the Delaware Valley Regional Planning Commission is the designated planning agency. The plans were originally developed pursuant to Sections 208 and 303 of the Federal Clean Water Act (P.L. 92-500, as amended), as well as the Water Quality Planning Act. They were further developed over a period of approximately four years and involved a significant public involvement program. The plans addressed such topics as, point and non-point pollution control, water quality assessments, population forecasts, best management practices, wastewater treatment facilities, and other water quality related issues.

All of the plans were adopted by the Governor, and certified to the United States Environmental Protection Agency, by October of 1980. The Continuing Planning Process is the legislated framework for the development and implementation of the Water Quality Management Plans. The proposed new rule establishes the framework for the Continuing Planning Process and for the document which articulates the goals, objectives, policies, and recommendations of this process, the "Statewide Water Quality Management Program Plan".

The proposal also clarifies the roles of the State, designated agencies, and counties in the water quality management process. It specifies the responsibilities of each of these governmental agencies with regard to the Statewide, areawide, and county plans. Procedures are established for: making consistency determinations on whether projects or activities which will require a NJDEP permit are consistent with the plans; resolving conflicts; and amending the areawide and Statewide plans. Furthermore, the proposal provides for a review, adoption, and certification process for the plans.

Social Impact

The proposed new rule will have a positive effect on the people and governmental agencies of the State in that it clearly specifies the program and procedures that the State will pursue in its efforts to protect water quality. The proposal establishes a consistent process whereby projects and activities that may affect water quality can be reviewed in the context of an overall Statewide Water Quality Management Program. The proposal also establishes a process for amending, updating and revising the Water Quality Management Plans.

Economic Impact

The proposed new rule will have a minor impact on developers of projects and activities, in that they will be required to provide documentation for consistency determinations prior to applying for NJDEP permits, or provide a certification assuring consistency, as appropriate. However, this cost should be far outweighed by the savings to the public. This savings will result from:

1. more efficient utilization of regional and municipal sewage facilities;
2. more realistic sizing of regional and municipal facilities due to advanced planning; and

3. more effective utilization of government manpower resources in the review of projects and activities.

Environmental Impact

The proposed new rule will have a positive effect on the environment in that the primary objective of the Continuing Planning Process is to provide a comprehensive and cohesive Statewide program directed toward the achievement of water quality objectives. This program will insure that waste treatment facilities are planned and implemented in a manner consistent with water quality goals and standards. Protection of environmentally sensitive areas associated with water resources will be assured through the implementation of the Water Quality Management Plans. Lastly, the biennial inventory of water quality will be utilized to establish priorities for water resource programs and will serve as an indicator of water quality improvement.

Full text of the proposed new rule follows.

CHAPTER 15 WATER QUALITY MANAGEMENT PLANNING AND IMPLEMENTATION PROCESS

SUBCHAPTER 1. GENERAL PROVISIONS

7:15-1.1 Scope

- (a) This chapter establishes the following policies and procedures:
1. Policies, program requirements, and procedures for all State, areawide, and county water quality management planning and implementation activities;
 2. The format for the Continuing Planning Process and the Statewide Water Quality Management Program Plan;
 3. Mechanisms to resolve conflicts among State agencies, designated planning agencies, designated management agencies, counties, and other parties affected by the water quality management planning process;
 4. Procedures for the amendment and revision of the Statewide Plan, and for other Water Quality Management Plans for which the State is responsible;
 5. The objectives of the Continuing Planning Process; and
 6. Procedures and criteria for the Department so that all projects and activities that affect water quality are consistent with the Water Quality Management Plans.

7:15-1.2 Construction

- (a) This chapter shall be liberally construed to permit the Department to discharge its statutory functions, and to effectuate the provisions of the Water Quality Management Plans.
- (b) The Commissioner may rescind, amend, or expand this chapter from time to time in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as amended and supplemented.

7:15-1.3 Purpose

- (a) The purpose of this chapter is to achieve the following objectives:
1. Establish the Continuing Planning Process and the Statewide Water Quality Management Program Plan;
 2. Define the relationship between the Statewide, areawide, and county Water Quality Management Plans;
 3. Identify the roles of the State, designated agencies, and county planning boards;
 4. Establish a water quality management consistency determination procedure;
 5. Establish procedures for resolution of conflicts in plan consistency;
 6. Establish Water Quality Management Plan amendment procedures; and

7. Provide for the review, adoption, and certification of Water Quality Management Plan revisions, updates, and amendments.

7:15-1.4 Severability

If any section, subsection, provision, clause, or portion of this chapter is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

7:15-1.5 Definitions

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

“Amendments” or “adopted amendments” are formal changes to the Statewide, areawide, or county Water Quality Management Plans that have been approved, adopted, and certified pursuant to this chapter.

“Adoption” means the approval given by the Governor to the Department to implement, through rulemaking procedures as necessary, any element of a Water Quality Management Plan.

“Areawide plan” means the areawide Water Quality Management Plan authorized in Section 5 of the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.). “Best Management Practices (BMPs)” means the methods to prevent or reduce the amount of pollution generated by a particular source.

“Certification” means the signification to the EPA Regional Administrator by the Governor, that Water Quality Management Plans or portions thereof are current in their inclusion of any annual revisions and their expected water quality improvements for specific Plan elements.

“Commissioner” means the Commissioner of the New Jersey Department of Environmental Protection or an authorized representative.

“Consistency determination” means the determination by the Department or designated planning agency as to whether a project or activity affecting water quality is either consistent or not inconsistent with an adopted areawide plan and/or the Statewide Plan.

“Consistency statement” or “certified consistency statement” means a statement by the applicant and certified by a licensed New Jersey Professional Planner that the project or activity is either consistent or not inconsistent with an adopted areawide plan and/or the Statewide Plan.

“Continuing Planning Process” means the Statewide planning process conducted by the Department of Environmental Protection as authorized in Section 7 of the Water Quality Planning Act (N.J.S.A. 58:11A-7).

“CP-1 application” means the formal application for a permit from the Department.

“Department” or “NJDEP” means the New Jersey Department of Environmental Protection.

“Designated area” means an area designated by the Governor as an areawide water quality management planning area pursuant to Section 4 of the Water Quality Planning Act (N.J.S.A. 58:11A-4).

“Designated management agency” means an agency designated in either the Statewide Plan, the areawide plan, or the county plan to implement one or more of the policies, objectives, and recommendations of the appropriate document.

“Designated planning agency” means an agency designated by the Governor to conduct areawide water quality management planning pursuant to Section 4 of the Water Quality Planning Act (N.J.S.A. 58:11A-4).

“Division” means the Division of Water Resources, NJDEP.

“Drawings and/or plans” means those drawings, site plans and/or blueprints prepared by a Professional Engineer or Professional Planner, as appropriate, which portray the development specifications of the site project or activity.

“Environmentally sensitive areas” means those areas identified either in the 201 Facilities Plan or the Water Quality Management

Plan as land areas possessing characteristics or features which are essential to the maintenance and/or improvement of water quality.

“Industrial/commercial” means any project or activity engaged in manufacturing, production and/or sales of technical services and/or products.

“Interim amendments” means amendments to the Statewide or areawide plans approved by the Commissioner or his designee but not yet adopted by the Governor or his designee.

“Major modification” means a significant alteration, expansion, or other change which may reasonably be expected to affect the quantity of flow treated or the quality of the effluent discharged to the waters of the State or to a publicly owned treatment works.

“Non-designated area” means an area not designated by the Governor as an areawide water quality management planning area pursuant to Section 4 of the Water Quality Planning Act (N.J.S.A. 58:11A-4).

“Non-designated planning agency” means the New Jersey Department of Environmental Protection which is responsible for water quality management planning in all areas not otherwise designated by the Governor, or where the responsibility has reverted back to the State.

“Non-point source” means a contributing factor to water pollution that cannot be traced to a specific discernible confined and discrete conveyance.

“Point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

“Revisions” means a change in the Water Quality Management Plan(s) necessary to correct existing information.

“State” means the State of New Jersey.

“Statewide Water Quality Management Program Plan” or “Statewide Plan” means the document containing the written policies, procedures and practices developed through the Continuing Planning Process pursuant to Section 7 of the Water Quality Planning Act (N.J.S.A. 58:11A-7).

“Storm water control plan” means a plan which details the necessary structures or measures designed to control storm water runoff from a site.

“201 Facilities Plans” means the plans for wastewater treatment facilities adopted pursuant to Section 201 of the Clean Water Act (33 U.S.C. 466 et seq.).

“201 Facilities Planning agencies” means those agencies which are responsible for conducting 201 facilities planning, pursuant to Section 201 of the Clean Water Act (33 U.S.C. 466 et seq.).

“303(e) and 209 Basin Plans” means the plans which establish the initial water quality standards and the preliminary continuing planning process for water basins.

“305(b) Water Quality Inventory Report” means the biennial report prepared by the State, pursuant to Section 305 of the Clean Water Act (33 U.S.C. 466 et seq.), which inventories and assesses the quality of surface and ground waters of the State.

“Update” means a change in the Water Quality Management Plan(s) necessary to modify existing information in order to reflect new or additional information.

“USGS quadrangle map” means any of the set of topographic maps prepared by the United States Geological Survey at 1:24,000 scale and known as “quadrangles” or “quads”.

“Water Quality Management Plan” or “Plan” means the documents which encompass the activities, defined in and referred to, in Sections 208 and 303 of the Clean Water Act (33 U.S.C. 466 et seq.) and the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.).

“Water Quality Planning Act” means the Act which provides for the restoration and maintenance of the State’s surface and ground waters through the use and coordination of areawide plans (N.J.S.A. 58:11A-1 et seq.).

"Waste load allocation" means the assignment of maximum waste loads to point source discharges so as to maintain water quality standards.

"Wastewater treatment works" means any device or system whether public or private, used in the storage, treatment, recycling, or reclamation of municipal or industrial waste of a liquid nature, including intercepting sewers, outfall sewers, sewage collection systems, cooling towers and ponds, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions and alterations thereof, elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any other works including sites for the treatment process or for ultimate disposal of residues resulting from such treatment.

1. Additionally, "wastewater treatment works" means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of pollutants, including storm water runoff, or industrial waste in combined or separate storm water and sanitary sewer systems.

"Work programs and plans" means those documents that detail the specific work activities proposed as part of a water quality management program.

SUBCHAPTER 2. PLANNING REQUIREMENTS

7:15-2.1 The Continuing Planning Process (CPP)

(a) The Department shall develop a Continuing Planning Process describing operating policies, procedures, and practices that comprise the water quality management planning process. This CPP is based upon formal State policy and on the policies, objectives, and programs in the areawide plans.

(b) The policies, goals, and objectives of the CPP which have Statewide or multi-county significance will be contained in the Statewide Water Quality Management Program Plan. In addition, elements of the adopted areawide plans having Statewide or multi-county significance may also be contained in the Statewide Plan. The remaining data and recommendations of the areawide and county plans will be incorporated by reference.

(c) The CPP may include, but is not limited to the following:

1. The following four-step process to insure that pollution problems are adequately addressed and solutions implemented:

i. Identification of existing and/or potential pollution problems related to surface and ground waters. (The 305(b) Water Quality Inventory Report shall be considered as the principal problem identification component of the Plan.)

ii. Development and recommendation of alternative technical solutions based upon available technology, effectiveness, economy, implementability, and public acceptance.

iii. Identification of strategies for the implementation of the aforesaid solutions through regulatory and non-regulatory programs, to include appropriate institutional and financial considerations.

iv. Designation of management agencies to carry out program activities.

2. Areawide Water Quality Management Plans, 201 Facilities Plans, the 305(b) Water Quality Inventory Report, and 303(e) and 209 Basin Plans.

3. Strategies, policies, standards, and criteria for point and non-point pollution control, protecting water resources, and/or other water quality related issues.

4. Waste load allocation policy and effluent limitations for point sources.

5. A description of coordination activities of State, county and local agencies pursuant to applicable water quality related laws and regulations.

6. A description of existing and anticipated wastewater treatment needs, together with a description of actions and priorities to meet these needs.

7. Identification of measures necessary to implement the Water Quality Management Plans.

8. All regulations and modifications thereto adopted pursuant to all State laws that are applicable to water quality management and to water pollution control.

9. A description of a public participation strategy.

10. A description of delegated responsibilities of the CPP.

7:15-2.2 Relationship between the Statewide, areawide, and county Water Quality Management Plans

(a) The Statewide Water Quality Management Plan contains the written provisions of the Continuing Planning Process. It is the plan which directs and coordinates water quality management planning for the entire State and serves as a guide for areawide planning.

(b) The areawide plan is the basis by which the State and/or the designated areawide planning agencies conduct water quality management planning for a particular "area" or section of the State which has either designated or non-designated area status.

1. The areawide plan and its amendments shall be consistent with the Continuing Planning Process and the Statewide Plan.

2. All policies, objectives, and recommendations adopted in the Statewide Plan shall be concurrently adopted in the areawide plans without the need for separate hearings.

(c) Every county planning board may conduct a county-wide water quality management planning process and prepare a county Water Quality Management Plan. This process and Plan must be consistent with the appropriate areawide plan and the Statewide Plan. All policies, objectives, and recommendations adopted in the Statewide and appropriate areawide plans shall be concurrently adopted in the county plans without the need for separate hearings.

7:15-2.3 Role of the Department

(a) The Department shall:

1. Conduct areawide planning for non-designated areas and for those designated areas where the responsibility for planning has reverted back to the State. Partial or full reversion of responsibility from designated planning agencies may result from one of the following circumstances:

i. An agency is financially, administratively, or otherwise unable to fulfill its responsibilities, as determined by the Department; or

ii. An agency desires to relinquish part or all of its responsibilities.

2. Coordinate and direct the activities of areawide and county water quality management planning agencies;

3. Review and approve areawide and county work programs, plans, and plan amendments;

4. To the maximum extent feasible, act as a resource for areawide and county planning agencies, providing them with technical assistance, and information on Best Management Practices and pollution control technologies;

5. Establish a Statewide Plan as part of its CPP responsibilities. Revise, update, and amend (as necessary) appropriate areawide or county plans, and/or the Statewide Plan;

6. Establish policies, procedures, standards, criteria, and regulations for water quality issues;

7. Establish waste load allocations on a case by case basis;

8. Prepare a biennial 305(b) Water Quality Inventory Report;

9. Prepare consistency determinations for non-designated areas and designated areas where the Department is responsible.

i. Also, determine consistency with 201 Facilities Plans for all designated and non-designated areas.

ii. Also, determine consistency for all projects and activities either proposed, constructed, and/or operated by the State for all designated and non-designated areas.

10. Coordinate State, county and local activities pursuant to the County Environmental Health Act (N.J.S.A. 26:3A2-21 et seq.);

11. Make recommendations to the Governor, or his designee, regarding certification and adoption of the areawide Water Quality Management Plans; and

12. Delegate aspects and responsibilities of the CPP to other State, Federal, interstate, or local agencies.

7:15-2.4 Role of designated water quality management planning agencies

(a) The designated water quality management planning agencies shall:

1. Revise, update, and amend the areawide and county plans as necessary;
2. Fulfill all responsibilities assigned to them under these rules, the Statewide Plan, their charter, any grant agreement, approved work program, and any agreement with the State;
3. Make consistency determinations pursuant to N.J.A.C. 7:15-3 et seq., and carry out other responsibilities as agreed with and/or assigned by the Department in accordance with N.J.A.C. 7:15-2.3;
4. Ensure that the areawide plan shall be consistent with the CPP and shall be in conformance with all State laws, rules, and regulations; and
5. Ensure that environmental health ordinances adopted pursuant to the County Environmental Health Act shall be consistent with the applicable areawide plan and the Statewide Plan.

(b) Each planning agency shall coordinate its work with every other planning agency with which it shares a river basin or sub-basin and shall refer any conflicts between itself and any such planning agency to the Commissioner for his mediation.

SUBCHAPTER 3. PLAN ASSESSMENT, REVISION, AND ADOPTION

7:15-3.1 Water Quality Management Plan(s) consistency determinations

(a) The Commissioner shall not undertake, nor shall he authorize through the issuance of a permit, approval, or any similar action, any project or activity that is inconsistent with applicable sections of the areawide, county and/or Statewide Plans. This requirement shall apply, but not be limited, to the following:

1. No permit shall be issued by the Department for a project or activity that is inconsistent with an approved Water Quality Management Plan.

2. For certain projects and activities which will require NJDEP permits, the Department (where it is responsible) and the designated planning agencies (where they are responsible) shall perform the consistency determination. Other projects and activities will either require a consistency statement from the applicant, certified by a New Jersey licensed Professional Planner, that the project or activity is either consistent or not inconsistent with the approved areawide Water Quality Management Plan; or require no determination at all.

3. Table 1 identifies the appropriate consistency requirement. Actions that do not require either a determination or a statement are considered to be either consistent or not inconsistent by their nature.

Table 1
Identification of Project and Activities
Requiring Consistency Determinations

i. Projects and activities proposing the following actions require Department or designated planning agency determinations:

- (1) New surface water discharges (regulated by N.J.S.A. 58:10A-1 et seq.).
- (2) New groundwater discharges (regulated by N.J.S.A. 58:10A-1 et seq.).
- (3) Existing surface water discharges proposing major modifications (N.J.S.A. 58:10A-1 et seq.).
- (4) Existing ground water discharges proposing major modifications (N.J.S.A. 58:10A-1 et seq.).
- (5) Sewer Systems (interceptors, collectors, pump stations) for residential developments of 50 units or greater (N.J.S.A. 58:10A-1 et seq.), and industrial/commercial and mixed use (including residential) development shaving flows of 25,000 gallons per day or more.
- (6) Actions regulated by the Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.).

(7) Actions regulated by the Wetlands Act of 1970 as Type B activities (N.J.S.A. 13:9A-1 et seq.).

(8) Waterfront developments not included in iii of this table.
ii. New projects and activities proposing the following actions require only a consistency statement certified by a New Jersey Professional Planner:

- (1) Diversion of surface or ground waters (N.J.S.A. 58:1A-1 et seq.).
- (2) Water lowering (N.J.S.A. 23:5-29, N.J.S.A. 58:4-9).
- (3) Construction and or operation of public potable water works (N.J.S.A. 58:12A et seq.).
- (4) Stream encroachments excluding "over-the-counter" actions (N.J.S.A. 58:16A-50 et seq.).
- (5) Actions regulated by the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.).
- (6) Sewer Systems (interceptors, collectors, pump stations) for residential developments of 49 units or less (N.J.S.A. 58:10A-1 et seq.), and industrial/commercial and mixed use (including residential) developments having flows of 25,000 gallons per day or less; excluding "over-the-counter" actions. (Projects that are extensions or modifications to existing projects where the cumulative total for the project is greater than 49 units or 25,000 gallons per day as appropriate, shall require a consistency determination.)

iii. Projects and activities proposing the following actions only, without any of the actions in parts i or ii of this table, do not require either a consistency determination or the consistency certification:

- (1) Purchase of water (pursuant to N.J.S.A. 58:1B-1 et seq., N.J.S.A. 58:22-1 et seq., N.J.S.A. 13:1).
- (2) Approved and non-approved water supply connections (N.J.S.A. 58:12A et seq.).
- (3) Construction or repair of dam (N.J.S.A. 58:4-2 et seq.).
- (4) Well drilling (N.J.S.A. 58:4A-14 et seq.).
- (5) Actions regulated by the Air Pollution Control Act (1954) (N.J.S.A. 26:2C-9.2 et seq.).
- (6) Renewals and/or modifications of existing permitted activities that do not propose major modifications (as determined by the Department).
- (7) Actions regulated by the Wetlands Act of 1970 as Type A activities (N.J.S.A. 13:9A-1 et seq.).
- (8) Stream encroachment and sewer extensions that would qualify for "over-the-counter" reviews pursuant to Ninety-Day Construction Permits (N.J.A.C. 7:1C-1).
- (9) Waterfront development activities covered under the General Waterfront Development Permit (N.J.S.A. 12:5-3, permit notice June 8, 1981); and all other projects and activities in man-made tidal water bodies; above ground cable crossings/transmission lines; and/or the placement of riprap at the top of any existing bulkhead.
4. Grants for construction of publicly-owned treatment works, facilities planning, design, and construction may be awarded only to appropriately designated management agencies as identified in the approved Water Quality Management Plan.
5. Department planning and funding programs that impact State waters, including but not limited to the establishment of water quality standards, water quality inventories, and waste load allocations.
 - (b) Prior to issuing an NJDEP permit, the Department shall require the applicant to provide either determination from the applicable designated planning agency or the State (in areas where it is responsible), or a certified consistency statement in accordance with (a) above, indicating that the project or activity is not inconsistent with the Water Quality Management Plan.
 - (c) The consistency determination review by the designated planning agency or the State may be conducted either concurrently with other NJDEP permit reviews, or prior to other reviews on a pre-application basis. If reviews are conducted concurrently, no permit may be issued if the project or activity is found to be inconsistent with the Water Quality Management Plan.
 - (d) Applications for NJDEP permits for proposals that only require

a certified consistency statement shall not be considered complete unless accompanied by the certified statement.

(e) If the project is in a designated area where the designated agency is responsible, then the applicant must follow the consistency determination procedure established by the designated planning agency and approved by the Department. The procedure in N.J.A.C. 7:15-3.2 shall be used by the designated planning agency until their procedure is adopted by them and has been approved by NJDEP.

(f) If the designated planning agency finds that the project is inconsistent with the Plan, then the conflict resolution process appropriate to that agency will be followed.

1. The conflict resolution procedure in N.J.A.C. 7:15-3.3 shall be used by the designated planning agency until their procedure is adopted and has been approved by NJDEP.

2. All procedures prepared by the designated planning agencies must be consistent with these regulations and approved by the Department.

(g) If a project is found to be inconsistent by the applicant (and/or the Professional Planner), then the applicant may request a resolution of conflict pursuant to N.J.A.C. 7:15-3.3 or the conflict resolution procedure adopted by the appropriate designated planning agency.

(h) The Department, or its delegated agency, shall be responsible for consistency determinations for the areawide plans in the non-designated areas of the State; for projects and activities either proposed, constructed, and/or operated by the State; and in those designated areas where the Department is responsible for consistency determinations.

(i) In those designated areas where the responsibility for consistency determinations remains with the Department, the Department shall have the authority to amend, revise, and/or update the areawide plan pursuant to the procedures in N.J.A.C. 7:15-3.4.

7:15-3.2 Procedures for making consistency determinations

(a) Proposals for projects and activities in Table 1 of N.J.A.C. 7:15-3.1(a)3 shall be submitted to the Department for a consistency determination. These project proposals shall include (where applicable), but not be limited to the following:

1. A narrative description of the project, including discussion of geographic location, type and number of development units, anticipated population, anticipated wastewater flow, availability of existing wastewater treatment works, proposals for new wastewater treatment works (to include proposed owner and operator), and storm water control plan.

2. A USGS quadrangle map showing the project site and discharge location.

3. Drawings and/or plans which illustrate the description in (a)1 above.

(b) The following procedure shall be followed by the Department in the review of a project proposal:

1. Upon receipt of a completed proposal, the Department will review the appropriate areawide plan and the Statewide Plan to determine whether the project or activity is consistent with the provisions and recommendations of the Plan. This review shall include, but not be limited to, the following plan components where applicable:

- i. Population forecast(s);
- ii. Wastewater flow projection(s);
- iii. Availability of wastewater treatment works (treatment plant, interceptor lines);
- iv. Identification of appropriate wastewater treatment works (regional or municipal facility, on-site treatment facility, on-site septic system, other);
- v. Identification of appropriate project management agency;
- vi. Use of Best Management Practices for storm water; and
- vii. Other water quality based policies, goals, objectives, and/or recommendations.
- viii. The Department will assure consistency with appropriate

elements of the applicable adopted 201 Facilities Plans for all non-designated and designated areas. These elements shall include, but not be limited to:

(1) Identification of areas suitable or unsuitable for development with consideration of environmentally sensitive areas; and

(2) Items i through v above, where applicable.

2. This review will be completed within 90 days of receipt of a completed project proposal, as identified by the Department, in accordance with (a) above.

3. Upon completion of the review, the Department will issue a determination of consistency. This determination will state that the project or activity is either consistent, not inconsistent, or inconsistent with the Water Quality Management Plans.

i. A project or activity will be determined to be consistent if it is in accordance with the policies, goals, objectives and/or recommendations of the Water Quality Management Plan.

ii. If the plans do not contain provisions precluding a project or activity, then this will be interpreted to mean that the project is not inconsistent. A finding of inconsistent is equivalent in effect to a finding of consistent.

iii. A finding of inconsistent means that the project is in conflict with the provisions of the Water Quality Management Plan.

4. If a project is found to be consistent or not inconsistent, then the applicant either may proceed to apply formally for the appropriate NJDEP permit, or may be issued a permit applied for concurrently (where appropriate). A statement from the Department will be provided for the applicant's use in preparing his CP-1 application, or for submittal to the appropriate Department bureau.

5. If a project or activity is found to be inconsistent, then the applicant will be notified of the reasons for this finding.

i. The applicant may request a resolution of the conflict. The conflict resolution procedure is presented in N.J.A.C. 7:15-3.3.

ii. No permit may be issued for a project or activity found to be inconsistent.

7:15-3.3 Procedures for resolution of conflicts in plan consistency

(a) The following procedures shall be followed where a proposed project or activity has been found to be inconsistent with the policies and procedures of the areawide plans where the State is responsible and/or the Statewide Plans, and the applicant chooses to resolve the conflicts. Conflicts with designated areawide plans shall follow the appropriate procedures of the designated agency. Such procedures must be consistent with this section and approved by the Department.

1. The applicant may formally request a resolution of conflict by writing to the Department via certified mail within 30 days of receipt of notification. This request shall include, but not be limited to:

- i. Description of project;
- ii. Description of conflict; and
- iii. Proposed resolution of conflict.

2. The applicant shall meet with the Department within a reasonable period of time to examine and resolve mutual differences in a resolution conference.

3. As a result of the resolution conference, the applicant may either revise his project or activity to conform with the Plan, or seek an amendment to the Plan as discussed in N.J.A.C. 7:15-3.4, or appeal the determination pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.).

4. Other interested parties (as determined by the Department) may appeal the consistency determination by writing to the Commissioner, via certified mail, within 30 days of the date of the determination.

7:15-3.4 Water Quality Management Plan amendment procedures

(a) The Department shall propose amendments to the Statewide

and appropriate areawide plans whenever such amendments are deemed necessary due to new or changed circumstances, modified State or Federal requirements, as a result of the conflict resolution procedure, new policies, and/or to correct information.

(b) Designated planning and/or management agencies, 201 Facilities Planning agencies, county or municipal governments, interested citizens, and applicants, following the conflict resolution procedure, may petition the Department to amend the Statewide plan.

1. Areawide plans may be amended pursuant to procedures adopted by the individual designated planning agency or the procedures under (c) below for the plans where the State is responsible.

2. Procedures developed by the designated planning agencies must be consistent with this section and approved by the Department.

3. All amendments to areawide and county plans must be approved by the Department and certified by the Governor or his designee.

(c) The procedures for seeking an amendment to the plans under the State's responsibility are as follows:

1. Requests for amendments should be submitted in writing to the Bureau of Planning and Standards (BPS), Division of Water Resources, CN 029, Trenton, New Jersey 08625.

2. Requests for amendments as a result of the conflict resolution procedure shall include, but not be limited to:

- i. Detailed description of the basis for the proposed amendment;
- ii. Previous resolution techniques utilized;
- iii. Documentation substantiating the party's position; and
- iv. Letters of approval or resolutions by parties affected by the proposed amendment, where appropriate (as determined by the Department). A list of parties that must be included will be provided by the BPS.

3. These requests, and any other amendment requests not initiated by the Department, shall be reviewed by the BPS, which will develop recommendations for the Commissioner's consideration.

4. For all amendment requests, the Commissioner shall make a preliminary decision within a reasonable period of time based upon a complete review of the case file, the BPS recommendation, and any other pertinent information.

i. If the Commissioner makes a preliminary approval or approves the amendment request, then a public notice will be posted in the New Jersey Register and two appropriate newspapers.

(1) Interested parties may submit written comments to the BPS within 30 days of the date of the notice.

(2) Parties may also request, in writing, that the Department hold a nonadversarial public hearing. If there is significant interest, as determined by the Department, in holding a public hearing, then a public hearing will be held 45 days after the public notice, and the public comment period will be extended for 15 days following the hearing. Following the notice or hearing, as appropriate, the Commissioner shall render a final decision on the amendment within 60 days.

ii. If the Commissioner disapproves the amendment request, then the request will be returned to the party for appropriate revision, if the applicant so chooses.

5. All appeals of amendment decisions shall be made in accordance with the requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq., as amended and supplemented).

6. Amendment proposals that have been approved by the Commissioner, in accordance with (c)4 above, shall be considered interim amendments until adopted by the Governor or his designee.

(d) Adoption of related portions of 201 Facilities Plans, 305(b) Water Quality Inventory, or any other water quality related plan or regulation formally adopted by the Governor, or his designee, shall be considered to be adopted in the Water Quality Management Plans without the need for further adoption procedures.

7:15-3.5 Water Quality Management Plans review, adoption and certification

(a) At a minimum, all the Water Quality Management Plans shall be reviewed annually and, if necessary, revised and updated.

1. The revisions, updates and any interim amendments to the areawide and Statewide plans will be adopted annually by the Governor, or his designee, subject to a public hearing, and pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq., as amended and supplemented).

2. A certification of this adoption shall be made to the United States Environmental Protection Agency annually by the Governor.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

**Fish and Game Council
1983-84 Game Code**

Proposed Amendment: N.J.A.C. 7:25-5

Authorized By: Fish and Game Council, Anthony DiGiovanni, Chairman.
Authority: N.J.S.A. 13:1B-30 et seq. and 23:1-1 et seq..

A **public hearing** concerning this proposal will be held on June 14, 1983 at 8:00 P.M. at:
State Museum Auditorium
West State Street
Trenton, NJ

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

George P. Howard, Chief
Bureau of Wildlife Management
Division of Fish, Game and Wildlife
Department of Environmental Protection
CN 400
Trenton, NJ 08625

The Fish and Game Council thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-248.

The agency proposal follows:

Summary

The proposed 1983-84 Game Code states when, under what circumstances, in what locations, by what means, and in what amounts and numbers, game birds, game animals, and furbearing animals may be pursued, taken, killed or had in possession.

The proposed amendments include the following revisions:

1. Season date adjustments to correspond with the 1983-84 calendar, including date changes for the regular and early small game seasons.

2. A delay in the early grouse season for the north zone in order to correspond with the October 5 opening of the woodcock season.

3. Zoning of the State for the hunting of eastern gray squirrel during the early season by using the same zones as prescribed for grouse and woodcock, and a one-week later opening of the early squirrel season in the south zone (October 22) to correspond to the traditional southern zone opening date for ruffed grouse and woodcock.

4. The addition of two turkey hunting areas and the expansion of one existing area with an allocation of 1,000 additional turkey hunting permits, and a provision allowing persons properly licensed to hunt with either shotgun or bow.

5. Adjustments in permit allocations for the trapping of beaver and otter, and a provision allowing successful beaver permittees first opportunity for otter permits.

6. Falconers restricted to the taking of only one eyass goshawk apiece in the spring and only with written permission and under the direction of the Division, and a requirement that falconers turn over to the Division any raptor which had died in captivity.

7. A provision allowing the training of dogs on designated portions of various wildlife management areas during the period of May 1 to August 31.

8. An extension of the fall bow deer season by one day to include the Veterans Day holiday.

9. Removal of the use of the bow during the firearm deer season.

10. Quotas and zone adjustments for the either-sex muzzleloading rifle and shotgun deer seasons, with season date changes including a one-day increase in the muzzleloading rifle deer season.

11. A provision to provide farmers the option of receiving either a muzzleloading rifle deer season permit or a shotgun deer season permit.

12. The reduction of the point value of the green-winged teal in New Jersey. Formerly a 25-point bird, it will become a 10-point bird under existing Federal regulations.

13. The inclusion of Veterans Day in the squirrel, grouse, woodcock, and crow hunting seasons.

Social Impact

The modifications being made of the game code are relatively minor in that there are no significant changes to permit quotas, hunting seasons or hunting areas. However, certain impacts will be felt regarding these minor changes.

Additional hunting areas have been identified, including two additional turkey hunting areas and five new deer hunting areas, thus permitting additional hunting access. Adjustments have been made to deer hunter quotas in order to manage the deer population in the deer hunting zones and wildlife management areas.

Farmers who possess deer hunting permits are now included in the category of hunters who may participate in muzzle loader rifle deer season.

By limiting the number of eyass goshawks which may be taken by falconers during season, this species will be better protected from depletion.

By first granting otter trapping permits to trappers with beaver trapping permits, today's proposal gives preference to trappers who are experienced and properly equipped, thus assisting the Department in controlling trapping activities.

The Department has included three additional penal restrictions which are believed necessary. Clarification is made to restrictions associated to muzzle loading rifles for deer hunting. A new rule is proposed to make it unlawful to attempt to hunt for more than the permitted number of deer. A rule has been added to clarify that only one hunting permit per individual allowed. These three rules add no restrictions which have not previously been enforced by the Department as a matter of policy, and therefore, there will be no additional social impact from these new provisions.

Economic Impact

Although there may be minor economic impact resulting from lower or higher permit quotas and from the minor adjustments to hunting seasons, the Department can foresee no specific economic impact or detriment arising from the rule changes proposed hereby.

Environmental Impact

Annual revisions to the Game Code ensure the preservation and maintenance of the State's wildlife resource.

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

SUBCHAPTER 5. GAME CODE

7:25-5.1 General provisions

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

(c) This Code, when adopted and when effective, shall supersede the provision of [1981-82] **1982-83** Game Code.

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

7:25-5.2 Male pheasant – Chinese ringneck (*Phasianus colchicus torquatus*), English or blackneck (*P. c. colchicus*), Mongolian (*P. c. mongolicus*), Japanese green (*Phasianus versicolor*); including mutants and crosses of above

(a) The duration for the male pheasant season is November [13] **12** to December [4] **3** inclusive and December [13] **12** through January [8, 1983] **7, 1984**, excluding December [15 and 16] **14 and 15** in those deer management zones in which a special regular firearm deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open.

(b) The duration for the male pheasant season for properly licensed persons engaged in falconry is September 1 to December [4] **3** inclusive and December [13] **12** through March 31, [1983] **1984**, excluding November [12] **11** and December [15 and 16, 1982] **14 and 15, 1983** in those deer management zones in which a special regular firearm deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open.

(c) (No change.)

(d) The hours for hunting pheasant on November [13] **12** will be 8:00 A.M. to one-half hour after sunset. All other days on which the hunting for pheasants is legal, the hours shall be sunrise to one-half hour after sunset.

(e) (No change.)

(f) The opening of the season on semi-wild preserves shall coincide with the listed Statewide openings of November [13] **12**.

(g) (No change.)

7:25-5.3 Cottontail rabbit (*Sylvilagus floridanus*), Black-tailed jack rabbit (*Lepus californicus*), white-tailed jack rabbit (*Lepus townsendii*), European hare (*Lepus europaeus*), chukar partridge (*Alectoris graeca*), and quail (*Colinus virginianus*)

(a) The duration of the season for the hunting of the animals enumerated by this section shall be November [13] **12** through December [4] **3** inclusive, and December [13, 1982] **12, 1983** to February [12, 1983] **11, 1984**, excluding December [15 and 16, 1982] **14 and 15, 1983** in those deer management zones in which a special regular firearm deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open.

(b) The duration of the season for the hunting of the animals enumerated by this section for properly licensed persons engaged in falconry shall be September 1 to December [4] **3** inclusive and December [13] **12** through March 31, [1983] **1984** excluding November [12] **11** and December [15, 16, 1982] **14 and 15, 1983** in those deer management zones in which a special regular firearm deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open.

(c) (No change.)

(d) The hunting hours for the animals enumerated in this section areas follows: November [13] **12**, 8:00 A.M. to one-half hour after sunset. On all other days for which hunting for these animals is legal, the hours shall be sunrise to one-half hour after sunset.

(e) (No change.)

7:25-5.4 Ruffed grouse (*Bonasa umbellus*)

(a) The duration for season for the hunting of grouse in that portion of the State situated north of Rt. 70 from Pt. Pleasant west to Camden shall be October [2] **5**, through December [4] **3** inclusive and December [13] **12** to February [12, 1983] **11, 1984**, excluding [November 12 and] December [15 and 16, 1982] **14 and 15, 1983** in those deer management zones in which a special regular firearm deer season is authorized and excluding any extra Special Permit Deer Season Day that is declared open.

(b) The duration of the season for the hunting of grouse in that portion of the State situated south of Rt. 70 from Pt. Pleasant west to Camden shall be October [23] **22** through December [4, 1982] **3, 1983** [1982] **1983** inclusive and December [13] **12** through February [12, 1983] **11, 1984**, excluding [November 12 and] December [15 and 16, 1982], **14 and 15, 1983** in those deer management zones in which a special regular firearm deer season is authorized and also excluding any extra special permit deer season day if declared open.

(c) (No change.)

(d) The hunting hours for ruffed grouse shall be sunrise to one-half hour after sunset, with the exception of November [13] **12** when legal hunting hours shall be 8:00 A.M. to one-half hour after sunset.

(e) (No change.)

7:25-5.5 Eastern gray squirrel (*Sciurus carolinensis*)

(a) The duration of the season for the hunting of squirrels in that portion of the State situated north of Rt. 70 from Pt. Pleasant west to Camden shall be October [16] **15** through December [4, 1982] **3, 1983** inclusive and December [13] **12** to February [12, 1983] **11, 1984**, excluding [November 12 and] December [15 and 16, 1982] **14 and 15, 1983** in those deer management zones in which a special regular firearm deer season is authorized and also excluding any extra special permit season day if declared open.

(b) The duration of the season for hunting squirrels in that portion of the State situated south of Rt. 70 from Pt. Pleasant west to Camden shall be October **22** through December **3, 1983** inclusive and December **12** to February **11, 1984**, excluding December **14 and 15, 1983** in those deer management zones in which a special shotgun deer season is authorized and also excluding any extra special deer season day that is declared open.

[(b)] (c) The duration of the season for the hunting of squirrels for properly licensed persons engaged in falconry shall be September 1 to December [4] **3** inclusive and December [13] **12** through March 31, [1983] **1984**, excluding [November 12 and] December [15 and 16, 1982] **14 and 15, 1983** in those deer management zones in which a special regular firearm deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open.

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

[(d)] (e) Hunting hours for squirrels shall be sunrise to one-half hour after sunset, with the exception of November [13] **12** when legal hunting hours shall be 8:00 A.M. to one-half hour after sunset.

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

7:25-5.6 Black bear (*Ursus americanus*); bobcat (*Lynx rufus*)

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

7:25-5.7 Wild turkey (*Meleagris gallapavo*)

(a) The duration of the Spring Wild Turkey Gobbler hunting season shall include four separate hunting periods of five days each.

1. The hunting periods for hunting areas 1-6 shall be:

[1.] i. Monday, [May 2] **April 30**-Friday, May [6] **4**.

[2.] ii. Monday, May [9] **7**-Friday, May [13] **11**.

[3.] iii. Monday, May [16] **14**-Friday, May [20] **18**.

[4.] iv. Monday, May [23] **21**-Friday, May [27] **25**.

2. The hunting periods for hunting area 22 shall be:

i. Monday, April 23-Friday, April 27.

ii. Monday, April 30-Friday, May 4.

iii. Monday, May 7-Friday, May 11.

iv. Monday, May 14-Friday, May 18.

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

(f) Method: The taking of one male wild turkey with firearm or bow and arrow under a special wild turkey permit will be permitted in [five] **seven** designated turkey hunting areas by holders of a special wild turkey permit.

1. Special wild turkey permits will be issued on an individual basis to holders of a valid [1983] **1984** firearm or archery hunting licenses. Only one application per person may be submitted for the spring wild turkey season.

(g) (No change.)

(h) Applying for a Wild Turkey Hunting Permit

1. Only holders of a valid [1983] **1984** firearm or archery hunting license, including juvenile licenses, may apply by detaching from the hunting license the stub marked "Special Spring Turkey", signing as provided on the back, and sending the stub together with a computer card application form which has been properly completed in accordance with instructions. [Applicants utilizing archery license stubs will be restricted to the use of bow and arrow only during the subsequent turkey season.] Application cards may be obtained from:

i.-iii. (No change.)

2. Only one application may be submitted by any one individual. **Duplicate applications will cause all applications by an individual to be void.**

3. Fill in the application form to include: name, address, [1983] **1984** firearm or archery hunting license number, turkey hunting area applied for, hunting period applied for, and any other information requested. Only those applications will be accepted for participation in random selection by card sorting machine which are received in the Trenton office during the period of February 14-March 1, [1983] **1984**, inclusive. Applications received after March 1 will not be considered. **DO NOT SEND FEE WITH THE APPLICATION.** Selection of permittees will be made on the basis of a random selection of computer cards.

4. (No change.)

5. Successful applicants will be notified by mail. The computer card and the permit issuance fee of \$5.00 in the form of a **check** or money order, made payable to "Division of Fish, Game and Wildlife" must be returned by mail before March [25, 1983] **23, 1984**. The Spring Turkey Hunting Permit will then be issued. Permits not claimed by March [25] **23** will be immediately reallocated in the same random manner as the original selection and be returnable two weeks thereafter.

i. (No change.)

(j) Turkey Hunting Area Map (on file at the Office of Administrative Law).

[1983] **1984** SPRING TURKEY HUNTING SEASON PERMIT QUOTAS

Turkey Hunting Area	Weekly Permit Quota	Season Total	Portions of Counties Involved
		Number	
1	100 †	400	Sussex
2	120 †	480	Sussex, Warren
3	80 †	320	Sussex, Warren
4	100 †	400	Sussex, Warren, Morris
5	100 †	400	Sussex
6	150 †	600	Sussex, Passaic, Bergen
22	100 ††	400	Atlantic, Cape May,

750 3000

Cumberland

† Applied to each of the four hunting periods (A, B, C, D) in areas 1-6:

- A. Monday, [May 2] **April 30** – Friday, May [6] **4**
- B. Monday, May [9] **7** – Friday, May [13] **11**
- C. Monday, May [16] **14** – Friday, May [20] **18**
- D. Monday, May [23] **21** – Friday, May [27] **25**

†† Applied to each of the four hunting periods (A, B, C, D) in area 22:

- A. **Monday, April 23 – Friday, April 27**
- B. **Monday, April 30 – Friday, May 4**
- C. **Monday, May 7 – Friday, May 11**
- D. **Monday, May 14 – Friday, May 18**

(k) (No change.)

(l) Location of turkey hunting areas:

1.-3. (No change.)

4. Turkey Hunting Area No. 4: That portion of Sussex, Warren and Morris Counties lying within a continuous line beginning at the intersection of Routes 94 and 206 at Newton; then south along Rt. 206 to its intersection with Rt. 183 at Netcong; then [southwest] southeast along Rt. 183 to its intersection with **Rt. 46; then west along Rt. 46 to its intersection with Rt. 94 at Columbia; then northeast along Rt. 94 to the point of beginning at Newton.**

5. (No change.)

6. **Turkey hunting area No. 6: That portion of Sussex, Passaic and Bergen Counties lying within a continuous line beginning at the intersection of Rt. 23 and Rt. 517 at the Hardistonville; then north along Rt. 517 to the New York State Line; then east along the New York State Line to its intersection with Rt. 202; then south along Rt. 202 to its intersection with Rt. 23; then west along Rt. 23 to the point of beginning at Hardistonville.**

7. **Turkey Hunting Area No. 22: That portion of Atlantic, Cape May and Cumberland Counties lying within a continuous line beginning at the intersection of Rt. 55 and Rt. 552 spur; then east along Rt. 552 spur to its intersection with Rt. 552; then east along Rt. 552 to its intersection with Rt. 557; then southeast along Rt. 557 to its intersection with Rt. 50; then southeast along Rt. 50 to its intersection with Rt. 9 at Seaville; then south along Rt. 9 to its intersection with Rt. 83 at Clermont; then west along Rt. 83 to its intersection with Rt. 47; then west and north along Rt. 47 to its intersection with Rt. 55; then north along Rt. 55 to the point of beginning.**

7:25-5.8 Mink (*Mustela vison*), and muskrat (*Ondatra zibethicus*), nutria (*Myocaster coypus*); trapping only

(a) (No change.)

(b) The duration of the mink, muskrat and nutria trapping season is as follows:

1. Northern Zone: 6:00 A.M. on November 15, [1982] **1983** through March 15, [1983] **1984**, inclusive, except on State Fish and Wildlife Management Areas.

2. Southern Zone: 6:00 A.M. on December 1, [1982] **1983** through March 15, [1983] **1984**, inclusive, except on State Fish and Wildlife Management Areas.

3. (No change.)

4. On State Fish and Wildlife Management Areas: 6:00 A.M. on January 1 through March 15, [1983] **1984** inclusive.

(c)-(e) (No change.)

7:25-5.9 Beaver (*Castor canadensis*) trapping

(a) (No change.)

(b) The duration of the trapping season for beaver shall be February 1 through February [28, 1983] **29, 1984**, inclusive.

(c) Special Permit: A special \$5.00 permit obtained from the Division of Fish, Game and Wildlife is required to trap beaver. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders.) Applications must be received in the Trenton office during the period December 13, [1982] **1983** – January 3, [1983] **1984**.

Applicants may apply for only one beaver trapping permit and must provide their [1983] **1984** trapping license number. Permits will be allotted on a zone basis as follows: Zone 1 – [15] **13**, Zone 2 – 3, Zone 3 – 2, Zone 4 – [4] **3**, Zone 5 – [4] **3**, Zone 6 – 2, Zone 7 – 2, Zone 8 – 6, Zone 9 – 2, Zone 10 – 9, Zone 11 – 4, Zone 12 – [6] **7**, Zone 13 – [2] **1**, Zone 14 – 4, **Zone 15 – 0**. Total [65] **61**.

(d) (No change.)

(e) A "beaver transportation tag" provided by the Division must be affixed to each beaver taken immediately upon removal from trap, and all beaver must be taken to a designated beaver checking station at the times and dates specified on the beaver permit and in any case no later than March [12, 1983] **10, 1984**.

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

7:25-5.10 River otter (*Lutra canadensis*) trapping

(a) (No change.)

(b) The duration for the trapping of otter shall be February 1 through February [28, 1983] **29, 1984**, inclusive.

(c) Special Permit: A special \$5.00 permit obtained from the Division of Fish, Game and Wildlife is required to trap otter. (If the number of applications received in the Trenton office exceeds the quotas listed, a random drawing will be held to determine permit holders.) **Beaver permit holders will be given first opportunity for other permits in their respective zones.** Applications must be received in the Trenton office during the period December 13, [1982] **1983** – January 3, [1983] **1984**. Only one application per person may be submitted for trapping otter, and applicants must provide their [1983] **1984** trapping license number. Permits will be allotted on a zone basis as follows: Zone 1 – 6, Zone 2 – 3, Zone 3 – 4, Zone 4 – [5] **6**, Zone 5 – 5, Zone 6 – 5, Zone 7 – [4] **3**, Zone 8 – 7, Zone 9 – 3, Zone 10 – 7, Zone 11 – [8] **6**, Zone 12 – [12] **9**, Zone 13 – 14, Zone 14 – 5, Zone 15 – 10. Total [98] **93**.

(d) (No change.)

(e) The "otter transportation tag" provided by the Division must be affixed to each otter taken immediately upon removal from the trap. All otter pelts and carcasses must be taken to a beaver-otter check station at dates specified on the otter permit, and in any case no later than March [12, 1983] **10, 1984**, where a pelt tag will be affixed and the carcass surrendered.

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

7:25-5.11 Raccoon (*Procyon lotor*), red fox (*Vulpes fulva*), gray fox (*Urocyon cinereoargenteus*) and Virginia opossum (*Didelphis virginiana*), striped skunk (*Mephitis mephitis*), long-tail weasel (*Mustela frenata*), short-tail weasel (*Mustela erminea*), coyote (*Canis latrans*); trapping only

(a) (No change.)

(b) The duration of the regular raccoon, red fox, gray fox, Virginia opossum, striped skunk, long-tail weasel, short-tail weasel and coyote trapping season shall be 6:00 A.M. on November 15, [1982] **1983** to March 15, [1983] **1984**, inclusive, except on State Fish and Wildlife Management Areas.

(c) The duration for trapping on State Fish and Wildlife management areas shall be after 6:00 A.M. on January 1, through March 15, [1983] **1984**, inclusive.

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

7:25-5.12 General trapping

(No change.)

7:25-5.13 Migratory birds

(a) Should any open season on migratory game birds, including waterfowl, be set by Federal regulation which would include the date of November [13, 1982] **12, 1983**, the starting time on such date will be 8:00 A.M. to coincide with the opening of the small game season on that date. However, this shall not preclude the hunting of migratory game birds, including waterfowl, on the tidal

marshes of the State as regularly prescribed throughout the season by Federal regulations.

(b) (No change.)

(c) No person shall take, attempt to take, hunt for or have in possession, any migratory game birds, including waterfowl, except at the time and in the manner prescribed by the code of Federal regulations of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, for the [1982-83] **1983-84** hunting seasons. The species of migratory game birds, including waterfowl, that may be taken or possessed and unless otherwise provided the daily bag limits shall be the same as those prescribed by the U.S. Department of the Interior, U.S. Fish and Wildlife Service for the [1982-83] **1983-84** hunting season.

(d)-(k) (No change.)

(l) No person shall take migratory game birds:

1.-10. (No change.)

11. Before 8:00 A.M. on November [13, 1982] **12, 1983**. However this shall not preclude the hunting of migratory game birds on tidal waters or tidal marshes of the State.

12.-13. (No change.)

14. Except at the time and manner prescribed by the State or Federal regulation, or by the [1982-83] **1983-84** Game Code.

15.-19. (No change.)

(m) Seasons and bag limits:

1. Whistling swan (*Cygnus olor columbianus*), and dove (*Zenaidura macroura*) are protected. There will be no open season on these birds during [1982-83] **1983-84**.

2. Rail and gallinule:

i. The duration of the season for hunting clapper rail (*Rallus longirostris*), Virginia rail (*Rallus limicola*), sora rail (*Porzana carolina*) and common gallinule (*Gallinula chloropus*) shall be September 1 through November 9, [1982] **1983** inclusive.

ii. (No change.)

3. Woodcock:

i. North Zone: The duration of the season for hunting woodcock (*Philohela minor*) in that portion of the State situated north of Route 70 from Point Pleasant to Camden shall be October 5 through November [27, 1982] **28, 1983**.

ii. South Zone: The duration of the season for hunting woodcock in that portion of the State situated south of Route 70 from Point Pleasant west to Camden shall be October [23] **22** through December [4, 1982] **3, 1983** inclusive and December [18] **12** through December [29, 1982] **23, 1983, excluding December 14 and 15 in those deer management zones in which a special regular firearm deer season is authorized and also excluding any extra Special Permit Deer Season Day if declared open.**

iii. (No change.)

iv. Hunting hours for woodcock are sunrise to sunset **except on November 12, when the hunting hours are 8:00 A.M. to sunset.**

[v. The woodcock season is closed November 12 and reopens 8:00 A.M. on November 13, 1982.]

[4. Point system-waterfowl: Under the point system in the green-winged teal (*Anas crecca*) will have a value of 25 points toward the total New Jersey waterfowl bag limit.]

(n) (No change.)

7:25-5.14 Special regulation limiting use of shotgun shells containing lead pellets

(No change.)

7:25-5.15 Common crow (*Corvus brachyrhynchos*)

(a) Duration for the season for hunting the common crow shall be Monday, Thursday, Friday and Saturday from August [16, 1982] **20, 1983** through March [28, 1983] **31, 1984** inclusive, excluding [November 12.] December [6-11] **5-10** and December [16, 1982] **15, 1983** in those deer management zones in which a special regular firearm deer season is authorized.

(b) (No change.)

(c) The hours for hunting crows shall be sunrise to one-half hour

after sunset, except on November [13] **12** when the hours are 8:00 A.M. to one-half hour after sunset.

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

7:25-5.16 General falconry regulations

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

(e) Restrictions on taking raptors:

1. Taking restrictions:

i. (No change.)

ii. Young birds not yet capable of flight (eyasses) may only be taken by a general or master falconer and only during the period April 15 to June 29 inclusive. No more than two eyasses may be taken by the same permittee during the specified period. No more than one eyass per nest may be taken, leaving at least one eyass in the nest. **No more than one eyass goshawk may be taken by the same permittee during the specified period. Eyass goshawks may be taken only with written consent from the Division.** A three-foot metal flashing painted a dark color must be fastened completely around the nest tree at least four feet from the base of the tree. The flashing shall be removed after the nestlings have fledged.

iii-viii. (No change.)

(f)-(h) (No change.)

(i) Miscellaneous:

1.-5. (No change.)

6. Feathers that are molted or feathers from birds held in captivity that die, may be retained by the permittee for imping purposes only. **Carcasses of birds which die in captivity must be turned over to the division for disposal.**

7.-11. (No change.)

(j)-(l) (No change.)

7:25-5.17 Raccoon (*Procyon lotor*) and Virginia opossum (*Didelphis virginiana*) hunting

(a) The duration for the season of hunting raccoons and Virginia opossum shall be one hour after sunset on October [2, 1982] **1, 1983** to one hour before sunrise on March 1, [1983] **1984**. The hours for hunting shall be one hour after sunset to one hour before sunrise.

(b) (No change.)

(c) No person shall hunt for raccoon or opossum with dogs and firearms or weapons of any kind from December [5, 1982] **4, 1983** to and including December 23, [1982] **1983**, and including any extra special permit deer season day.

(d) No person shall train a raccoon or opossum dog other than during the period of September 1 to October [2, 1982] **1, 1983** and from March 1 to May 1, [1983] **1984**. The training hours shall be one hour after sunset to one hour before sunrise.

(e) (No change.)

7:25-5.18 Woodchuck (*Marmota monax*) hunting

(a) Duration for the hunting of woodchucks with a rifle in this State shall be March [19] **17 through September** [30, 1983] **28, 1984**. License hunters may also take woodchuck with shotgun or long bow and arrow or by means of falconry during the regular woodchuck rifle season and during the upland game season established in N.J.A.C. 7:25-5.3.

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

7:25-5.19 Red fox (*Vulpes fulva*) and gray fox (*Urocyon cinereoargenteus*) hunting

(a) The duration of the red fox and gray fox hunting season is as follows:

1. Northern Zone: November [13, 1982] **12, 1983** through March 1, [1983] **1984** inclusive, excluding December [6-23, 1982] **5-23, 1983** and also excluding any extra special permit deer season day if declared open.

2. Southern Zone: November [13, 1982] **12, 1983** through February [12, 1983] **11, 1984**, excluding December [6-23, 1982] **5-23, 1983** and also excluding any extra special permit deer season day if declared open.

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

(d) The hours for hunting fox shall be 8:00 A.M. to one-half hour after sunset on November [13, 1982] **12, 1983** and other days sunrise to one-half hour after sunset.

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

7:25-5.20 Dogs

(a) There shall be no exercising or training of dogs on State Fish and Wildlife Management Areas May 1 to August 31, inclusive, **except on portions of various wildlife management areas designated as dog training areas**, [and on November 12] and there shall be no exercising or training of dogs on **any Wildlife Management Area on November 11 and on Clinton, Flatbrook, Black River, Assumpink and Whittingham WMA's** on the following Sundays: November [14, 21, and 28, 1982] **13, 20 and 27, 1983**.

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

7:25-5.21 Squirrel (*Sciurus* spp.), raccoon (*Procyon lotor*), opossum (*Didelphis virginianus*), skunk (*Mephitis mephitis*), weasel (*Mustela* spp.) and woodchuck (*Marmota monax*); damage

(No change.)

7:25-5.22 Wild birds or mammals; possession, killing
(No change.)

7:25-5.23 Firearms and missiles, etc.

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

(e) Except as specifically provided below for waterfowl hunters, semi-wild and commercial preserves, muzzle loader deer hunters and trappers, from December [6 through 11] **5 through 10** inclusive, it shall be illegal to use any firearm of any kind other than a shotgun. Persons hunting deer shall use a shotgun not smaller than 20 gauge or larger than 10 gauge with the standard hollow base rifled slug or hollow base slug shotgun shell only or a shotgun not smaller than 12 gauge nor larger than 10 gauge with the buckshot shell. It shall be illegal to have in possession any firearm missile except the 20, 16, 12 or 10 gauge hollow base rifle slug or hollow base slug shotgun shell or the 12 or 10 gauge buckshot shell. (This does not preclude a person legally engaged in hunting on semi-wild or commercial preserves for the species under license from being possessed solely of shotgun and nothing larger than No. 4 fine shot, nor a person engaged in hunting waterfowl only from being possessed solely of shotgun and nothing larger than No. 2 lead fine shot or BB steel shot. A legally licensed trapper possessing a valid rifle permit may possess and use a .22 rifle and short rimfire cartridge only while tending his trap line.)

1. Persons who are properly licensed may hunt for deer with a muzzle loading rifle during the [1982] **1983 six-day** firearm deer season and the [muzzle loading rifle either-sex] **special permit, muzzle loader** deer season.

2. Muzzle loading rifles used for hunting deer are restricted to **single-shot**, single barrelled weapons with flintlock or percussion actions, shall not be less than .44 caliber and shall fire a single missile or projectile. No telescopic sights shall be attached or affixed to the muzzle loading rifle while engaged in hunting for deer. Only one muzzle loading rifle may be possessed while hunting. **Double barrel and other types of muzzle loading rifles capable of firing more than one shot without reloading or holding more than one charge are prohibited.**

3. (No change.)

(f)-(n) (No change.)

7:25-5.24 Bow and arrow; general provisions

(a) Bow [and arrow] means long bow, [only] straight limb, reflex, recurve and compound bow. All mechanical holding devices are prohibited. All crossbows or variations thereof are prohibited.

(b) No person shall use a [long] bow and arrow for hunting, on December [15 and 16, 1982] **14 and 15, 1983** in those deer

management zones in which a special regular [firearm] **shotgun** deer season is authorized or on any extra Special Permit Deer Season Day if declared open, or between one-half hour after sunset and one-half hour before sunrise during the [Long] **Fall Bow and Arrow Deer Seasons** or [between 5:00 P.M. EST and 7:00 A.M. EST] **during the six-day** Firearm Deer Season, or between one-half hour after sunset and sunrise during other seasons.

(c) During the [Long] Bow and Arrow Seasons for taking deer, October [2] **1 - November 11, 1983** and January [8-22, 1983] **7-21, 1984**, or any other time bow and arrow deer or turkey hunting is permitted, all arrows used for taking deer or turkey must be fitted with an edged head of the following specifications:

1.-5. (No change.)

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

7:25-5.25 White-tailed deer (*Odocoileus virginianus*) [long] fall bow and arrow exclusively (either sex)

(a) Deer of either sex and any age may be taken by [long] bow and arrow exclusively from one-half hour before sunrise on October [2] **1** to one-half hour after sunset November 11, [1982] **1983** inclusive. **Legal hunting hours shall be one-half hour before sunrise to one-half hour after sunset.**

(b) Bag limit: One deer of either sex. Kill must be tagged immediately with completely filled in "transportation tag" and must be transported to a deer checking station before 8:00 P.M. EST on day killed. Nothing contained herein shall preclude a person who has legally killed and reported a deer from then procuring one valid and proper permit which will allow this person to continue hunting and take one additional legal deer during the [1982] **1983** fall [long] bow and arrow deer season. This permit shall not be valid on the day of issuance.

1. (No change.)

(c) This season shall be open only to holders of a valid [1982] **1983** bow and arrow hunting license which contains an attached fall bow and arrow deer "transportation tag". If the anticipated harvest of deer has not been accomplished during this season, additional days of [long] bow and arrow deer hunting may be authorized by the Director. Such authorization and dates thereof shall be announced by press and radio.

(d) (No change.)

7:25-5.26 White-tailed deer (*Odocoileus virginianus*) [special] winter [long] bow and arrow, exclusively (either sex)

(a) Deer of either sex and any age may be taken by [long] bow and arrow exclusively from one-half hour before sunrise on January [8] **7** to one-half hour after sunset on January [22, 1983] **21, 1984**. **Legal hunting hours shall be one-half hour before sunrise to one-half hour after sunset.**

(b) (No change.)

(c) This season will be open only to holders of a valid [1983] **1984** bow and arrow hunting license which contains an attached winter bow season "transportation tag", in addition to the regular fall bow season "transportation tag". If the anticipated harvest of deer has not been accomplished during this season, additional days of special winter bow and arrow deer hunting may be authorized by the Director. Such authorization and dates thereof shall be announced by press and radio.

(d) (No change.)

7:25-5.27 White-tailed deer (*Odocoileus virginianus*) **six-day** firearm

(a) Duration for this season will be December [6 through 11, 1982] **5 through 10, 1983** inclusive **with shotgun or muzzle loading rifle, exclusively.**

(b) Bag Limit: One deer, antlered only, except in those areas designated as "hunters choice" indicated in (d) below. One deer for the season, with antler at least three inches in length. Kill must be tagged immediately with completely filled-in "transportation tag"

and must be transported to a deer checking station before 7:00 P.M. EST on day killed. Any legally killed deer which is recovered too late to be brought to the check station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement district headquarters. Said deer must be brought to a checking station on the next day to receive a legal "possession tag". If the season has concluded, said deer must be taken to a regular deer checking station on the following weekday to receive a legal "possession tag". Nothing contained herein shall preclude a person who has legally killed and reported a deer from then procuring one valid and proper permit which will allow this person to continue hunting and take one additional, legal deer during the [1982] **1983** firearm deer season. This permit shall not be valid on the day of issuance.

(c) A person who has legally taken deer during the fall [long] bow and arrow season can legally take an antlered deer with a shotgun or muzzle loading rifle during the interval of December [6-11, 1982] **5-10, 1983** if he possesses his valid firearm license, but he may not take another deer with a bow. If the anticipated harvest of deer has not been accomplished during this season, additional days of [firearm or long bow and arrow] deer hunting may be authorized by the Director, with the approval of the Council. Such authorization and dates thereof shall be announced by press and radio.

(d) (No change.)

(e) Hunter Hours: December [6] **5** through December [11, 1982] **10, 1983**, inclusive, 7:00 A.M. EST to 5:00 P.M. EST, with [gun or long bow] **shotgun or muzzle loading rifle**.

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

7:25-5.28 White-tailed deer (*Odocoileus virginianus*) special permit season, muzzle loader rifle only, either sex

(a) The Director with the approval of the Council may authorize the issuance of special **muzzle loading rifle** deer permits for the taking of deer anywhere within this State or at any state or Federal installation.

(b) (No change.)

(c) One deer of either sex, and any age, may be taken with a special deer permit for muzzle loading rifles. **It is unlawful to attempt to take or hunt for more than the number of deer permitted.**

(d) Duration of the special deer permit season for muzzle loading rifles shall be from 7:00 A.M. EST to 5:00 P.M. EST on December [13, 14, 17, 18, 20, 21, 22, 23, 1982] **12, 13, 16, 17, 19-23, 1983** or any other time as determined by the Director.

(e) (No change.)

(f) Method: The taking of one deer of either sex with a muzzle loading rifle under a special deer permit for muzzle loading rifles, **or a farmer deer permit for muzzle loading rifles** in addition to legal antlered deer allowed under Statewide [antlered] **six-day firearm** deer season and either-sex deer allowed under the Statewide [long] **fall** bow and arrow season and either-sex deer allowed during the winter bow season, will be permitted in designated deer management zones by holders of a special deer permit for muzzle loading rifles **and on their own property by holders of a farmer muzzle loading deer permit.**

1. Special deer permits for muzzle loading rifles will be issued on an individual basis to holders of valid [1982] **1983** firearm licenses. Only one application per person may be submitted for the special either-sex deer seasons for muzzle loader or [regular firearm] **shotgun. Special farmer muzzle loader deer permits will be issued on an individual basis to owners or lessee of farms who reside thereon or to the immediate members of their families 14 years of age or older who also reside thereon, upon receipt of a notarized application form.**

(g) Special permits for muzzle loading rifles consist of back display which include a "special permit transportation tag" and a validated permit application stub. The back display portion of the permit will be conspicuously displayed on the outer clothing in

addition to the valid firearm license. The validated application stub must be in the possession of permittee while hunting. The "Deer Transportation Tag" portion of the permit must be completely filled out, separated at the perforation and affixed to the deer immediately upon killing. This completely filled in "special permit transportation tag" allows legal transportation of the deer of either sex to an authorized checking station only. Personnel at the checking station will issue a "possession tag". Any permit holder killing a deer of either sex on December [13, 14, 17, 20, 21, 22, 23, 1982] **12, 13, 16, 17, 19-23, 1983** must transport this deer to an authorized checking station by 7:00 P.M. EST on the day killed to secure the legal "possession tag". The possession of a deer of either sex after 7:00 P.M. EST on the day killed without a legal "possession tag" shall be deemed illegal possession. Any legally killed deer which is recovered too late to be brought to the check station by closing time must be immediately reported by telephone to the nearest Division of Fish, Game and Wildlife law enforcement district headquarters. Said deer must be brought to a checking station on the next open day to receive a legal "possession tag". If the season has concluded said deer must be taken to a regular deer check station on the following weekday to receive a legal possession tag.

(h) Applying for a Special Deer Permit for Muzzle Loader Rifles:

1. Only holders of valid [1982] **1983** firearm hunting licenses may apply, by detaching from their hunting license the stub marked "Special Deer Season [1982] **1983**", signing as provided on the back, and sending the stub, together with a Special Muzzle Loader Season computer card application form which has been properly completed in accordance with the instructions. Application cards may be obtained from:

i.-iii. (No change.)

2. (No change.)

3. Only one application, whether for muzzle loader rifle season or the [regular firearm] **shotgun** either-sex accompanied by the hunting license stub, may be submitted by any one individual.

4. Fill in the application form to include: Name, address, [1982] **1983** firearm hunting license number, deer management zone applied for, [valid rifle permit number] and any other information requested. Only those applications will be accepted for participation in random selection by card sorting machine which are received in the Trenton office during the period of August [30] **29** through September [14, 1982] **13, 1983**, inclusive. Applications [received] **postmarked** after the [14] **13th** will not be considered. **DO NOT SEND FEE WITH THE APPLICATION.** Selection of permittees will be made on the basis of a random selection of computer cards.

5. (No change.)

6. Successful applicants will be notified by mail. The computer card and the permit fee of \$10.00 in the form of a money order, made payable to "Division of Fish, Game and Wildlife" must be returned by mail before October [12, 1982] **11, 1983**. The Special Deer Permit will then be issued. Permits not claimed by October [12] **11** will be immediately reallocated in the same random manner as the original selection and be returnable two weeks thereafter.

(i) **Applying for the Special Farm Deer Permit for Muzzle Loading Rifles:**

1. **Only the owner or lessee of a farm, who resides thereon, or the immediate members of his family 14 years of age or older who also reside thereon, may apply on forms provided for a special farmer muzzle loader rifle deer permit. Under this subsection a farm is an area of five acres or more and producing a gross income in excess of \$500.00 and is tax assessed as farmland. Special farmer muzzle loading rifle permits will be issued only in those deer management zones where a special muzzle loading rifle deer season is prescribed.**

2. **Application forms may be obtained from the County Agricultural Agent, the Division of Fish, Game and Wildlife, CN 400, Trenton, New Jersey 08625, or the conservation officers.**

3. Fill in the application form to include: Name, age, size of farm, address, and any other information requested thereon. THIS APPLICATION MUST BE NOTARIZED. Properly completed application forms will be accepted in the Trenton office only during the period of September 1 through 17, 1983. There is no fee required, and all qualified applicants will receive a special farmer deer permit, for muzzle loading rifle delivered by mail.

4. Only one application, whether for muzzle loading permit season or shotgun permit season may be submitted per individual.

OFFICE OF ADMINISTRATIVE LAW NOTE: In the 1982-83 Game Code, subsection (i) contained rules on the "Use of Special Deer Permit for Muzzle Loader Rifles". The 1982-84 Game Code replaces that text with new rules under (i) and (j) concerning Special Farmer and Special Muzzle Loader Deer permits. Existing text under (j) through (l) is redesignated (k) through (m).

(j) Use of Special Muzzle Loader Deer Permit and Special Farmer Muzzle Loader Deer Permit:

1. The special muzzle loader deer permit is valid only in the deer management zone (DMZ) designated and is not transferable. The special farmer muzzle loader deer permit is valid only on the farm occupied and designated in the application and is not transferable. The DMZ quota and DMZ map follow. The special permit hunter is responsible for hunting in the correct DMZ or farm as indicated and in ascertaining the boundaries.

2. Neither the special muzzle loader deer permit nor the special muzzle loader farmer deer permit is transferable from Deer Management Zone to Deer Management Zone, or from farm to farm, or from individual to individual. The permit must be used on the farm, in the Deer Management Zone, and by the individual to whom it was issued.

[(j)](k) Deer Management Zone Map (on file at the Office of Administrative Law).

1983 MUZZLE LOADER DEER SEASON PERMIT QUOTA EITHER SEX

Deer Mgt. No.	Anticipated Deer Harvest	Permit Quota	Portions of Counties Involved
	[1982] 1983	[1982] 1983	
1	[36] 60	[218] 350	Sussex
2	[22] 33	[111] 165	Sussex
3	[11] 21	[110] 210	Sussex, Passaic, Bergen
4	[83] 108	[488] 635	Sussex, Warren
5	[144] 117	[935] 730	Sussex, Warren
6	[42] 60	[284] 400	Sussex, Morris, Passaic, Essex
7	[47] 58	[188] 340	Warren, Hunterdon
8	[190] 85	[1055] 1025	Warren, Hunterdon, Morris, Somerset
9	[46] 46	[219] 220	Morris, Somerset
10	[112] 154	[467] 640	Warren, Hunterdon
11A	[101] 53	[561] 290	Hunterdon
41	[55] 67	[210] 230	Mercer, Hunterdon
12	[75] 128	[364] 610	Mercer, Hunterdon, Somerset
13	[33] 19	[275] 110	Morris, Somerset
14	[92] 40	[920] 365	Mercer, Somerset, Middlesex, Burlington
15	[16] 15	[160] 150	Mercer, Monmouth, Middlesex
16	[29] 23	[281] 230	Ocean, Monmouth

17	[12]	8	[114]	80	Ocean, Monmouth, Burlington
18	[8]	19	[54]	125	Ocean
19	[6]	10	[60]	100	Camden, Burlington
20	[10]	10	[100]	100	Burlington
21	[19]	50	[95]	250	Burlington, Ocean
22	[8]	7	[36]	30	Burlington, Ocean
42	[3]	2	[30]	15	Atlantic
23	[25]	38	[231]	340	Burlington, Camden, Atlantic
24	[21]	46	[107]	210	Burlington, Ocean
25	[3]	22	[30]	120	Gloucester, Camden, Atlantic, Salem
26	[26]	44	[120]	200	Atlantic
27	[10]	25	[55]	110	Salem, Cumberland
28	[4]	16	[40]	100	Salem, Cumberland, Gloucester
29	[15]	44	[102]	220	Salem, Cumberland
30	[4]	7	[24]	30	Cumberland
31	[3]	2	[30]	10	Cumberland
43	[3]	11	[30]	40	Cumberland
44	[2]	1	[18]	10	Cumberland
32	[2]	6	[17]	20	Cumberland
45	[6]	17	[44]	80	Cumberland, Atlantic, Cape May
46	[9]	18	[90]	65	Atlantic
33	[7]	20	[25]	70	Cape May, Atlantic
34	[12]	27	[71]	140	Cape May, Cumberland
35	[6]	15	[41]	100	Gloucester, Salem
47		3		20	Atlantic, Cumberland, Gloucester
48		11		75	Burlington
49		0		0	Burlington, Camden, Gloucester
50		18		80	Middlesex, Monmouth
51		19		190	Monmouth, Ocean

Total [1,358] 1,703 [8,410] 9,630

[(k)] (l) Muzzle loader, either-sex permits not applied for by September [14, 1982] 13, 1983 will be reallocated to [regular firearm] shotgun either-sex season permit applicants.

[(l)] (m) (No change in text.)

7:25-5.29 White-tailed deer (*Odocoileus virginianus*) special permit season, [regular firearms] shotgun only, either sex

(a) The Director with the approval of the Council may authorize the issuance of special shotgun deer permits for the taking of deer anywhere within the State or at any state or Federal installation.

(b) (No change.)

(c) One deer of either sex, any age, may be taken with a special deer permit. It is unlawful to attempt to take or hunt for more than the number of deer permitted.

(d) Duration of the special shotgun deer permit season shall be from 7:00 A.M. EST to 5:00 P.M. EST on Wednesday, December [15, 1982] 14, 1983 except that in zones 13, 14, 16, [22, and] 42, 50 and 51, the special permit deer season will also include December [16] 15, or at other times as determined by the Director.

(e) (No change.)

(f) Method: The taking of one deer of either sex with a [firearm] shotgun under a special deer permit or a farmer deer permit, in addition to the legal antlered deer allowed under Statewide antlered deer season and either-sex deer allowed under the Statewide [long] fall bow and arrow season and either-sex deer allowed during the winter bow season, will be permitted in designated deer management zones by holders of a special shotgun deer permit and on their own property by holders of a farmer shotgun deer permit.

1. Special shotgun deer permits will be issued on an individual

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basis to holders of valid [1982] **1983** firearm licenses. Only one application per person may be submitted for the special season whether as a farmer or a license holder. Farmer deer permits will be issued on an individual basis to owners or lessees of farms who reside thereon, or the immediate members of their families 10 years of age or older who also reside thereon, upon receipt of a notarized application form.

(g) (No change.)

(h) Applying for a Special **Shotgun** Deer Permit:

1. Only holders of valid [1982] **1983** firearm hunting licenses **including juvenile firearm license holders** may apply, by detaching from their hunting license the stub marked "Special Deer Season [1982] **1983**", signing as provided on the back, and sending the stub, together with a computer card application form which has been properly completed in accordance with the instructions. [Juvenile license holders may apply by submitting a photocopy of their hunting license in lieu of a hunting license stub.] Application cards may be obtained from:

i.-iii. (No change.)

2. (No change.)

3. Only one application, whether for muzzle loader rifle either-sex season or for the regular **shotgun** either-sex season accompanied by the hunting license stub, may be submitted by any one individual.

4. Fill in the application form to include: Name, address, [1982] **1983** firearm hunting license number, deer management zone applied for, and any other information requested. Only those applications will be accepted for participation in random selection by card sorting machine which are received in the Trenton office during the period of August [30] **29** – September [14, 1982] **13, 1983**, inclusive. Applications [received] **postmarked** after the [14th] **13th** will not be considered. **DO NOT SEND FEE WITH THE APPLICATION.** Selection of permittees will be made on the basis of a random selection of computer cards.

5. (No change.)

6. Successful applicants will be notified by mail. The computer card and the permit fee of \$10.00 in the form of a money order, made payable to "Division of Fish, Game and Wildlife" must be returned by mail no later than October [12, 1982] **11, 1983**. The Special Deer Permit will then be issued. Permits not claimed by October [12th] **11** will be immediately reallocated in the same random manner as the original selection and be returnable two weeks thereafter.

(i) Applying for the Special Farmer **Shotgun** Deer Permit:

1.-2. (No change.)

3. Fill in the application to include: Name, age, size of farm, address, and any other information requested thereon. **THIS APPLICATION MUST BE NOTARIZED.** Properly completed application forms will be accepted in the Trenton office only during the period of September [6-20, 1982] **1-17, 1983**. There is no fee required and all qualified applicants will receive a special farmer deer permit, delivered by mail.

4. Only one application, whether for muzzle loader permit season or shotgun permit season may be submitted per individual.

(j) Use of Special **Shotgun** Deer Permit and Special Farmer **Shotgun** Deer Permit.

1. The special **shotgun** deer permit is valid only in the deer management zone (DMZ) designated and is not transferable. The special **shotgun** farmer deer permit is valid only on the farm occupied and designated in the application and is not transferable. The DMZ quota and DMZ map follow. The special permit hunter is responsible for hunting in the correct DMZ or farm as indicated and in ascertaining the boundaries.

2. Neither the special **shotgun** deer permit nor the special **shotgun** farmer deer permit is transferable from Deer Management Zone to Deer Management Zone, or from farm to farm, or from individual to individual. The permit must be used on the farm, in the Deer Management Zone, and by the individual to whom it was issued.

(k) Deer Management Zone Map (on file at the Office of Administrative Law).

1983 MUZZLE LOADER DEER SEASON PERMIT QUOTA EITHER SEX

Deer Mgt. No.	Anticipated Deer Harvest		Permit Quota		Portions of Counties Involved
	[1982]	1983	[1982]	1983	
1	[145]	196	[775]	1118	Sussex
2	[86]	165	[509]	970	Sussex
3	[45]	65	[357]	650	Sussex, Passaic, Bergen
4	[330]	310	[1507]	1455	Sussex, Warren
5	[574]	793	[2287]	3004	Sussex, Warren
6	[167]	181	[1057]	1350	Sussex, Morris, Passaic, Essex
7	[186]	343	[637]	1107	Warren, Hunterdon
8	[759]	681	[2832]	2352	Warren, Hunterdon, Morris, Somerset
9	[184]	289	[902]	1430	Morris, Somerset
10	[448]	401	[1098]	1113	Warren, Hunterdon
11A	[405]	347	[1069]	990	Hunterdon
41	[222]	325	[910]	851	Mercer, Hunterdon
12	[299]	498	[977]	1517	Mercer, Hunterdon, Somerset
13†	[131]	231	[595]	1040	Morris, Somerset
14†	[366]	454	[1220]	1663	Mercer, Somerset, Middlesex, Burlington
15	[65]	75	[474]	480	Mercer, Monmouth, Middlesex
16†	[117]	63	[582]	525	Ocean, Monmouth
17	[46]	128	[299]	421	Ocean, Monmouth, Burlington
18	[33]	64	[292]	427	Ocean
19	[24]	8	[147]	80	Camden, Burlington
20	[42]	45	[365]	291	Burlington
21	[78]	32	[678]	267	Burlington, Ocean
22	[31]	20	[196]	200	Burlington, Ocean
42†	[12]	15	[60]	65	Atlantic
23	[100]	63	[769]	443	Burlington, Camden, Atlantic
24	[83]	35	[692]	350	Burlington, Ocean
25	[14]	12	[130]	55	Gloucester, Camden, Atlantic, Salem
26	[104]	65	[520]	278	Atlantic
27	[38]	15	[194]	70	Salem, Cumberland
28	[18]	29	[91]	156	Salem, Cumberland, Gloucester
29	[58]	212	[165]	466	Salem, Cumberland
30	[14]	16	[70]	73	Cumberland
31	[10]	11	[75]	110	Cumberland
43	[12]	0	[31]	0	Cumberland
44	[9]	9	[60]	38	Cumberland
32	[7]	0	[70]	0	Cumberland
45	[23]	0	[119]	0	Cumberland, Atlantic, Cape May
46	[35]	53	[145]	171	Atlantic
33	[30]	26	[207]	173	Cape May, Atlantic
34	[50]	72	[244]	262	Cape May, Cumberland
35	[24]	22	[169]	136	Gloucester, Salem
47		21		117	Atlantic, Cumberland, Gloucester
48		27		144	Burlington
49		0		0	Burlington, Camden, Gloucester

50†	38	253	Middlesex, Monmouth
51†	50	417	Monmouth, Ocean

Total [5,424] **6,505** [24,164] **27,068**

†Indicates two day zones (December 14 and 15, 1983).

(l) [Regular firearm] **Shotgun**, either-sex permits not applied for by September [14, 1982] **13, 1983** will be reallocated to muzzle loader, either-sex permit applicants.

(m) (No change.)

(n) Locations of Deer Management Zones:

Zones 1-46 (No change.)

Zone No. 47: That portion of Gloucester, Atlantic and Cumberland counties lying within a continuous line beginning at the intersection of Rts. 47 and 40 at Malaga; then southeast on Rt. 40 to its intersection with Rt. 552; then southwest on Rt. 552 to spur 552; then west on spur 552 to its intersection with Rt. 47 at Millville; then north on Rt. 47 to Malaga, the point of beginning.

Zone No. 48: That portion of Burlington County lying within a continuous line beginning at the intersection of the N.J. Turnpike and Rt. 38 near Moorestown; then east along Rt. 38 to its intersection with Rt. 530; then east along Rt. 530 through Pemberton to its intersection with the southern border of the Fort Dix Military Reservation boundary; then northward along the Fort Dix boundary to its intersection with County Road 670; then east on County Road 670 to its intersection with Rt. 545 at Wrightstown; then northwest on Rt. 545 to its intersection with the Delaware River at Bordentown; then southwest along the east bank of the Delaware River to Rt. 541 at the City of Burlington; then southeast along Rt. 541 to its intersection with Interstate 295; then southwest along I-295 to its intersection with Rancocas Creek; then east along the Rancocas Creek to its intersection with the N.J. Turnpike; then southwest along the N.J. Turnpike to its intersection with Rt. 38, the point of beginning.

Zone No. 49: That portion of Gloucester, Camden and Burlington counties lying within a continuous line beginning at the mouth of Mantua Creek on the Delaware River; then northeast along the east bank of the Delaware River to Rt. 541 at the City of Burlington; then southeast along Rt. 541 to its intersection with Interstate 295; then southwest along I-295 to its intersection with Rancocas Creek; then east along the Rancocas Creek to its intersection with the N.J. Turnpike; then southwest along the N.J. Turnpike to its intersection with Rt. 73; then south along Rt. 73 to its intersection with County Road 689 at Berlin; then southwest along County Road 689 to its intersection with County Road 688; then west along County Road 688 to its intersection with County Road 705; then northwest along County Road 705 to its intersection with County Road 635; then southwest on County Road 635 to its intersection with Rt. 47; then north on Rt. 47 to its intersection with Mantua Creek; then northwest along Mantua Creek to its mouth at the Delaware River, the point of beginning.

Zone No. 50: That portion of Monmouth and Middlesex Counties lying in a continuous line beginning at the intersection of the N.J. Turnpike and Rt. 522 near Jamesburg; then southeast on Rt. 522 to its intersection with Rt. 537 at Freehold; then southwest on Rt. 537 to its intersection with Rt. 33; then east on Rt. 33 to its intersection with the western edge of the fenced boundary of the Earle Naval Weapons Depot; then north and east along the fenced boundary of the Earle Depot to its intersection with County Route 38 (Wayside Road); then south on County Route 38 to its intersection with Rt. 547; then north on Rt. 547 to its intersection with the Garden State Parkway; then north on the Garden State Parkway to its intersection with Rt. 36 near Eatontown; then east on Rt. 36 to the Atlantic Ocean; then north along the Atlantic coast line to the Raritan Bay; then south and west along the shore of Raritan Bay to the Raritan River; then continuing west along the south bank of the

Raritan River to its intersection with the N.J. Turnpike; then southwest along the N.J. Turnpike to its intersection with Rt. 522, the point of beginning.

Zone No. 51: That portion of Monmouth and Ocean counties lying in a continuous line beginning at the intersection of Rt. 547 and Rt. 571 near Lakehurst; then southeast along Rt. 571 to its intersection with the Garden State Parkway; then south on the Garden State Parkway to Rt. 37 near Toms River; then east on Rt. 37 to the Atlantic Ocean; then north along the Atlantic coast line to its intersection with Rt. 36 in Long Branch; then west on Rt. 36 to its intersection with the Garden State Parkway; then south on the Parkway to its intersection with County Route 16 (Asbury Avenue) near Tinton Falls; then westward on County Route 16 to its intersection with the fenced boundary of the Earle Naval Weapons Depot; then westward along the fenced boundary of Earle Naval Weapons Depot to its intersection with Rt. 34; then south on Rt. 34 to the Collingwood Circle and Rt. 547 (Asbury Road); then south on Rt. 547 through Lakewood to its intersection with Rt. 571, the point of beginning.

7:25-5.30 White-tailed deer (*Odocoileus virginianus*) special permit, firearms only, either-sex, Great Swamp

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

(c) Duration of the Great Swamp Special Permit Season shall be from 7:00 A.M. EST to 5:00 P.M. EST on the following dates: December [7, 8, 9, 17, 18, 1982] **6, 7, 8, 16, 17, 1983** and January [7, 8, 1983] **6, 7, 1984** or as may otherwise be designated by the United States Fish and Wildlife Service.

(d)-(i) (No change.)

7:25-5.31 Special wildlife management permits (No change.)

7:25-5.32 Pheasant and quail stamp designated areas (No change.)

7:25-5.33 Controlled Hunting Wildlife Management Areas

(a) The Wildlife Management [Areas] **Area** selected for limited hunter density [are Black River in Morris County.] is Clinton in Hunterdon County [and Whittingham in Sussex County]. [Hunter numbers on Black River and Whittingham will be controlled on November 13 and November 25 (Thanksgiving).] The Clinton W.M.A. will be controlled on November [13, 20 and 25] **12, 19 and 24** (Thanksgiving). Registration will begin at 5:30 A.M. on all days except November [13] **12** (opening day). On November [13] **12**, registration will begin at 6:30 A.M. All hunters must check out by 12:00 noon. Registration is not required after 12:00 noon.

(b) [Hunter quotas on the above dates are as follows: The Black River Area will be limited to 400 hunters at one time. Quotas] **Hunter quota** for the Clinton Area [and the Whittingham Area] will be **195** [175 and 325 hunters respectively]. Additional registrants will be accepted as replacements for registrants who have completed hunting and checked out for the day.

(c) Hunters will be admitted on a first-come, first-served basis [at the three tracts]. No reservations will be accepted and hunters must register in person. [Registration booths for the Black River Area will be located at three parking lots.] One registration station will be located at the Clinton Area, on the north side of Spruce Run Reservoir. [Registration booths at Whittingham will be located at each of the three parking lots.]

(d)-(f) (No change.)

7:25-5.34 Special wildlife salvage permit (No change.)

7:25-5.35 White-tailed deer (*Odocoileus virginianus*) special biological permit (No change.)

7:25-5.36 Fish and Game Law Enforcement District
Headquarters
(No change.)

7:25-5.37 Severability
(No change.)

HEALTH

(a)

PUBLIC HEALTH COUNCIL

**Communicable Diseases
Immunization of Pupils in Schools**

Proposed Readoption: N.J.A.C. 8:57-4

Authorized By: Public Health Council, Evelyn Geddes,
Chairperson.
Authority: N.J.S.A. 26:1A-7.

A **public hearing** concerning this proposal will be held on June 13, 1983 at 9:30 A.M. at:

Department of Health
Health-Agriculture Building
Room 805 - Conference Room
John Fitch Plaza
Trenton, NJ

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Ronald Altman, M.D.
Assistant Commissioner
Division of Epidemiology and
Disease Control
Department of Health
CN 360
Trenton, NJ 08625

The Public Health Council thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66 (1978), this rule would otherwise expire on July 24, 1983. The readoption of these rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of their adoption.

This proposal is known as PRN 1983-243.

The agency proposal follows:

Summary

In accordance with "sunset" and other provisions of Executive Order 66(1978), the Public Health Council proposes to readopt N.J.A.C. 8:57-4 concerning Immunization of Pupils in Schools. These rules were originally filed and became effective on September 1, 1975. The rules implement the provisions of Chapter 150 of the public laws of 1974 which changed the statutes related to immunization requirements for pupils in schools in New Jersey. The law repealed all of the powers previously given to local boards of education to set immunization requirements and placed them in the State Sanitary Code under Chapter 14.

The immunization requirements contained in N.J.A.C. 8:57-4.1 apply to the seven vaccine preventable diseases of measles, rubella, mumps, polio-myelitis, diphtheria, pertussis and tetanus.

The regulations set forth in N.J.A.C. 8:57-4 apply to all pupils attending any public or private school in New Jersey, including child care centers, nursery schools and kindergartens, except that the regulations shall not apply to pupils under one year of age. Children under one year of age are not included in the regulations because several of the required immunizations should not be given under one year of age.

The principal or other person in charge of a school, shall not knowingly admit or retain a pupil who has not met the immunization requirements, except where specific exemptions are provided. Children may be exempted from the immunization requirements for either medical or religious reasons. A child is exempted from the requirements if a licensed physician states that an immunization is medically contraindicated. The physician's statement is to be maintained by the school as part of the immunization record of the pupil. A school must allow exemption of pupils from the immunization requirements, whose parents or guardians, certify that the immunization requirements interfere with the free exercise of the pupil's religious rights.

The uniform immunization requirements set forth in N.J.A.C. 8:57-4 have provided for better levels of protection against the vaccine preventable diseases and have helped to control disease outbreaks in New Jersey schools. These requirements are in agreement with current public health practices and recommendations and have a positive effect on the health of New Jersey school children. Overall protection rates for the seven vaccine preventable diseases have increased from 65 percent in 1975 to 98 percent in 1982.

Several sections of N.J.A.C. 8:57-4 were amended in 1978 and additional changes were made in 1982. These amendments were instituted in order to keep in step with current public health practices and recommendations. The changes also provided for better immunization levels and helped to prevent disease outbreaks in New Jersey schools. No additional revisions are necessary at this time. Therefore, N.J.A.C. 8:57-4 is proposed for readoption without change.

Social Impact

The rules set forth in N.J.A.C. 8:57-4 apply to all pupils attending public and private schools in New Jersey, including nursery schools, Day Care Centers and other Child Care facilities.

The enforcement of the uniform requirements of N.J.A.C. 8:57-4 has ensured the continued high immunization levels needed to protect New Jersey school children from vaccine preventable diseases. Since 1974, disease morbidity for both measles and rubella has been greatly reduced. Reported cases of measles has decreased from 467 cases in 1974 to an all time low of 18 in 1982.

The primary means to assure high immunization levels among New Jersey school children is the continued enforcement of the rules contained in N.J.A.C. 8:57-4. If these rules are not readopted, there will be no uniform requirements to follow. This would allow for the growth of susceptible populations and increase of disease morbidity within New Jersey.

Economic Impact

The economic impact of N.J.A.C. 8:57-4 is quite considerable. The summary of health and resource benefits due to immunization are far reaching. Numerous cases of disease are prevented, lives are saved, mental retardation avoided, school attendance maintained, physician visits saved, hospitalizations avoided and additional years of normal and productive life achieved by preventing premature death and retardation. The readoption of N.J.A.C. 8:57-4 is essential in order to maintain the high levels of protection and prevent disease outbreaks among New Jersey school children.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:57-4, as amended in the New Jersey Register.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICE

Physicians Manual, Long Term Care Services Manual, Home Health Services Manual Initial Visit for Rehabilitation Services

Proposed Amendments: N.J.A.C. 10:54-1.7, 10:60-1.4, 10:63-1.4

Authorized By: George J. Albanese, Commissioner, Department of Human Services.
Authority: N.J.S.A. 30:4D-6b(5), 7 and 7b.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN 712
Trenton, NJ 08625

The Department of Human Services thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-246.

The agency proposal follows:

Summary

The proposal concerns initial evaluation visits by a qualified therapist to evaluate a Medicaid patient's need for physical, occupational or speech-language therapy. The evaluation itself must be ordered by the attending physician, i.e., the physician responsible for treating the patient.

The provider, either a long term care facility, home health agency, or physician (for physical therapy only) may submit a claim for payment of the initial visit, whether or not subsequent treatment is necessary. The provider, not the therapist, is reimbursed for the initial evaluation visit and any therapy subsequently authorized. In the event subsequent treatment visits are recommended, then prior authorization must be obtained from the Medical Consultant in the Medicaid District Office, in accordance with current procedures.

This proposal does not pertain to rehabilitation services in hospitals.

Social Impact

The social impact should be positive, because providers will be reimbursed for making an initial evaluation visit to determine whether Medicaid patients require rehabilitative therapies. If a determination is made that additional therapies are required, then the service(s) will be provided to the Medicaid patient, and the provider reimbursed, so long as prior authorization is obtained.

Economic Impact

Providers will be reimbursed for claims submitted for initial evaluation visits performed in their settings in accordance with Medicaid policies, procedures, and fee schedules.

The economic impact on the Division will be minimal, because

only one visit is allowed without prior authorization. The Division believes it is prudent to reimburse providers for their initial evaluation in order to have an accurate assessment of the patient's needs.

There will be no cost to the Medicaid patient.

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

10:54-1.7 Physical medicine and [rehabilitative] **rehabilitation** services

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

(f) Rehabilitation services may be provided by the following:

1.-5. (No change.)

6. Physical therapy performed in a physician's office is reimbursable service under the following conditions:

i. (No change.)

ii. **Except for the initial evaluation visit, all subsequent therapy visits have** [Has] been prior authorized by the Medicaid medical consultant. [of the local medical assistance unit (see subsection (g) of this section);]

iii.-iv. (No change.)

(g) **If the attending physician orders an evaluation for physical, speech-language or occupational therapy, an appropriate qualified therapist can make an initial visit to evaluate the need for rehabilitation therapies (physical, speech-language or occupation) without prior authorization. The reimbursement fee for the initial visit will be the same as the allowance for the subsequent treatment visits. All subsequent therapy visits require prior authorization which is granted by the Medicaid Medical Consultant of the Medicaid District Office.** [Except in a hospital setting, prior approval by the local medical consultant of the local medical assistance unit is required for rehabilitation services.] [Initial or subsequent] **Prior authorization, which is required in all settings except the hospital,** shall not exceed 60 calendar days and shall be granted only when the following conditions are met:

1.-4. (No change.)

10:60-1.4 Policies and requirements for authorization of covered services

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

(f) Prior authorization:

1. The home health agency may bill the Medicaid Fiscal Agent for the [administrative] cost of one initial evaluation visit to eligible Medicaid patients without prior authorization. Prior authorization is required for all other visits and/or services. **If the attending physician orders an evaluation for physical, speech-language or occupational therapy, an appropriate qualified therapist can make an initial visit to evaluate the need for special therapies (physical, speech-language or occupational) without prior authorization. All subsequent therapy visits require prior authorization.**

2.-3. (No change.)

(g) (No change.)

10:63-1.4 Additional services

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

(e) Rehabilitation services: (No change.)

1. If the attending physician orders an evaluation for physical, speech-language or occupational therapy, an appropriate qualified therapist can make an initial visit to evaluate the need for physical, speech-language or occupational therapy without prior authorization. The reimbursement fee for the initial visit will be the same as the allowance for the subsequent treatment visits. Prior authorization by the Medicaid Medical Consultant of the Medicaid District Office is required for all subsequent therapy visits.

[1.] 2. (No change in text.)

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

- [3.]4. Providers of service:
 - i. (No change.)
 - ii. Reimbursement for rehabilitation services is made to the LTCF and not to the therapist by this program. Prior authorization is required as outlined in (e)5 below.
 - (1) (No change.)
 - (2) Outpatient physical therapy, speech-language therapy and occupational therapy furnished only by a Medicaid LTCF to Medicaid eligible inpatients only may be billed by the facility to the Bureau of Claims and Accounts if prior authorization for the treatment visits has been given by the [LMAU] Medicaid District Office.
 - (3) (No change.)
- [4.]5. (No change in text.)
- [5.]6. Medicaid patients not eligible for Medicare benefits: Prior authorization by the Medical Consultant of the [LMAU] Medicaid District Office is not required for [rehabilitation services] the initial evaluation visit. See N.J.A.C. 10:63-1.4(e)1. All subsequent rehabilitation therapy treatment visits require prior authorization. Authorization shall be considered only when the request includes a written prescription by a licensed physician who is the patient's attending physician, substantiating the need, type of therapy, objective of treatment, and an estimate of the number of treatment days. Prescriptions must be definitive as to type and scope. Orders such as "Physical Therapy three times a week" will not be accepted. Prior authorization may be for a period not exceeding 60 days. Subsequent authorizations for periods not exceeding 60 days may be issued by the Medical Consultant of the [LMAU] Medicaid District Office when the request is supported by the written prescription of the attending physician, including a statement of the anticipated number of treatments required, and a progress report of the recipient's condition.
- [6.]7. (No change in text.)
- [7.]8. (No change in text.)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

**Vision Care Manual
Lens and Frame Envelopes**

Proposed Amendment: N.J.A.C. 10:62-3.8

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.
Authority: N.J.S.A. 30:4D-6b(7); 30:4D-7 and 7b.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN 712
Trenton, NJ 08625

The Department of Human Services thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-226.

The agency proposal follows:

Summary

The rule concerns vision care providers, who are currently required to submit the lens and/or frame envelope(s) with their claim form. This proposal will delete this requirement. Vision care providers will still be required to submit the fabricating laboratory invoice with the MC-9 claim form.

The purpose of the proposal is to facilitate claim processing for both the Medicaid program and vision care providers.

Social Impact

There is no change in vision care services being provided to Medicaid patients.

Claim processing should be less cumbersome for vision care providers, who will not have to submit lens and/or frame envelope(s) with their claim.

Economic Impact

There is no change in vision care fee schedules associated with this proposal. The Division might experience a slight administrative cost savings through its fiscal agent, Prudential Insurance Company, due to reduced time in checking claim forms for lens and/or frame envelope(s).

Vision care providers might experience a small cost savings since the cost of mailing claim forms to Prudential should be reduced.

There is no cost to the Medicaid patients.

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

10:62-3.8 Mailing instructions

(a) (No change.)

(b) For items not requiring prior authorization and items for which prior authorization has been received, attach the [lens envelope(s), frame envelope(s) or] fabricating laboratory invoice along with the authorization approval, if required, to the [original] contractor's copy of the MC-9 claim form and mail to:

The Prudential Insurance Co.
of America
P.O. Box 1900
Millville, NJ 08332

(c) Retain the other copies of the MC-9 claim form for your records.

(d) (No change.)

(b)

DIVISION OF PUBLIC WELFARE

**General Assistance Manual
Pharmaceutical Assistance to the Aged and Disabled (PAAD)**

Proposed Amendment: N.J.A.C. 10:85-8.4

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.
Authority: N.J.S.A. 44:8-111(d).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Audrey Harris, Acting Director
Division of Public Welfare
CN 716
Trenton, NJ 08625

The Department of Human Services thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-231.

The agency proposal follows:

Summary

The proposed amendment serves to update information available to General Assistance (GA) administrators regarding the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program, and alerts GA personnel that disabled persons are now eligible for pharmaceutical assistance. Additionally, the proposal describes what expenses PAAD recognizes, the amount of the copay and the program's financial eligibility standards.

Social Impact

Since the proposal provides information regarding the PAAD program, it may have significant social impact upon that part of the population that is unaware of the program. Also, persons who apply for General Assistance, but are determined to be financially ineligible, may still be referred to the PAAD program by the GA director.

Economic Impact

The proposal may result in greater utilization of the PAAD program by the general public since more people will be aware of the existence of the program. Impact on GA is slight due to the small population served.

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

10:85-8.4 Referral to State agencies

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

(g) The Division of Medical Assistance and Health Services, which is a division of the New Jersey Department of [Institutions and Agencies] **Human Services**, administers the following programs:

1. Pharmaceutical [a]Assistance to the [a]**Aged and Disabled** (PAAD) program: Under this program, eligible persons are reimbursed for approved claims covering the cost of prescription drugs [and] **including insulin, insulin syringes and needles.** [Payment is limited to 80 percent of the allowable costs in excess of the deductible established by law. (The amount of the deductible will vary for each individual since it is based on a percentage of net income.)] **Each eligible individual pays a fixed amount (currently \$2.00) for each prescription or each purchase of diabetic supplies.**

i. Eligibility requirements: This program restricts eligibility to residents of New Jersey who are 65 years of age or older and [whose annual income is less than \$9,000.] **to Social Security Disability benefits recipients (eligibility limited to the person actually disabled) whose annual income is less than \$12,000 (married couple \$15,000).**

ii. [How to apply: Inquiry should be made to the local medical assistance unit (there is one in each county). These offices provide liaison with providers of health services and serve as information centers for the division's program.] **Application procedures: Application forms with instructions are available at county offices on Aging, county welfare agencies, and the local Division of Medical Assistance and Health Services (DMAHS) offices called Medicaid District Offices (MDO). Applications are also available at many pharmacies.**

2. (No change.)

(h)-(j) (No change.)

LAW AND PUBLIC SAFETY

(a)

BOARD OF MEDICAL EXAMINERS

Chiropractic Endorsement Fee Schedule

Proposed Amendments: N.J.A.C. 13:35-3.3 and 6.13

Authorized By: Board of Medical Examiners, Edwin H. Albano, M.D., President.
Authority: N.J.S.A. 45:9-2.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Edwin H. Albano, M.D., President
Board of Medical Examiners
28 West State Street
Trenton, NJ 08608

Persons who would like the Board to hold a public hearing on any aspect of these rules should so indicate in their written submissions. The Board will thereafter decide whether, and to what extent, a public hearing shall be held and shall notify all such interested persons. The Board of Medical Examiners thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-245.

The agency proposal follows:

Summary

The present proposal supplements the rule proposed at 15 N.J.R. 511 and cited as N.J.A.C. 13:35-3.3 dealing with endorsements of sister state licenses of various categories of health professionals licensed by the Board of Medical Examiners. The proposed new section sets forth existing policy of the Board respecting licensure of chiropractors by endorsement of other state licenses or board certifications. The other proposal replaces the fee proposal appearing at 15 N.J.R. 518 and cited as N.J.A.C. 13:35-6.13. The Board has been requested by the Division of Consumer Affairs to increase fees for initial examination of the various categories of Board licensees, and also to increase the initial and biennial registration fees. The increases in examination fees are required because of direct increases in costs incurred by the Board for the administration of its statutory duties.

Social Impact

The proposed addition to the endorsement rule will have no social impact as it simply embodies long-standing Board policy.

The increase in examination fees and in registration fees is not intended or expected to have any significant social impact. The changes are unlikely to affect the number of professionals seeking licensure.

Economic Impact

The proposed addition to the rule respecting endorsement has no economic impact because it continues existing Board policy.

The proposed increase in examination and registration fees is not intended or expected to have any significant economic impact on licensees or on the public, considering the current economic climate. The Board has been advised by the Division of Consumer Affairs that its present fee structure is wholly inadequate for the responsibilities it is carrying out, and that increases are necessary to avoid that shortfall. Increase in examination fees is required because of direct increase in costs incurred by the Board for the purchase of tests prepared by national testing organizations, for rental of test locations and for costs of proctoring and administration. The increase in registration fees is necessitated because of the substantial increase in costs billed to the Board by the Office of Administrative Law and expenses associated with the increased enforcement responsibilities of the Board for investigating complaints of improper professional conduct by licensees submitted by consumers and Federal, State and county law enforcement agencies, hospitals, insurance companies, etc. No surplus in revenues is sought or anticipated by the proposed increases. The increases have been selected to minimize the adverse impact each class of licensees may experience as a result. The impact on licensees is believed to be negligible.

Full text of the proposal, which supplements the rule proposed at 15 N.J.R. 511 and replaces the fee schedule proposed at 15 N.J.R. 518, follows (additions indicated in boldface thus).

13:35-3.3 Endorsement of sister-state M.D. or D.O. license after extended practice or specialty board or national board certifications or by any combination of national boards and FLEX examinations; also, podiatry board endorsement and chiropractic endorsement

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

(c) The Board shall grant a license to practice chiropractic, by endorsement, to any person who shall furnish proof of satisfaction of the requirements demanded in N.J.S.A. 45:9-41.5 relating to applicants for admission by examination who shall furnish proof of:

1. Certification of the National Board of Chiropractic Examiners in accordance with N.J.S.A. 45:9-41.10 certifying that the applicant has attained a passing score in said examination; and

2. Passing a clinical examination administered under the authority of this Board pursuant to the provisions of N.J.S.A. 45:9-1 and 45:9-41.8.

13:35-6.13 Fee schedule

(a) The following fees shall be charged by the Board of Medical Examiners:

- 1. Medicine and surgery (M.D. or D.O. license)
 - i. Examination - all three parts, three days \$200.00
 - ii. Re-examination
 - Day 1 75.00
 - Day 2 75.00
 - Day 3 125.00
 - iii. License (M.D. or D.O.) 150.00
 - iv. N.J.S.A. 45:9-21(n)-exemption 150.00
 - v. N.J.S.A. 45:9-21(b)- temporary license 50.00
 - vi. Endorsement 150.00
 - vii. Biennial registration 80.00
- 2. Chiropractic (license)
 - i. Examination 150.00
 - ii. Re-examination 50.00
 - iii. Endorsement 150.00
 - iv. Biennial Registration 60.00
- 3. Podiatry (license)
 - i. Examination 150.00
 - ii. Re-examination 100.00
 - iii. Endorsement 150.00
 - iv. Biennial Registration 60.00
- 4. Bio-analytical laboratory directorship, plenary license

- i. Examination (plenary license) 150.00
- ii. Re-examination 150.00
- iii. Exemption (plenary license) 150.00
- Bio-analytical laboratory directorship, specialty license
- iv. Examination (specialty license) 150.00
- v. Re-examination (specialty license) 150.00
- vi. Exemption (specialty license) 150.00
- vii. Biennial registration, plenary and specialty 60.00
- 5. Midwifery (license)
 - i. Examination (lay midwife license) 50.00
 - ii. Re-examination 50.00
 - iii. Endorsement (lay midwife license) 50.00
 - iv. Biennial registration (lay midwife license) 60.00
- Certified Nurse Midwifery (registration)
 - v. Examination, C.N.M. 50.00
 - vi. Re-examination, C.N.M. 50.00
 - vii. Endorsement, C.N.M. 50.00
 - viii. Biennial registration, C.N.M. 60.00
- 6. Physical therapy (registration)
 - i. Examination, plenary practice 50.00
 - ii. Re-examination, plenary practice 50.00
 - iii. Registration fee after examination 100.00
- Physical therapy assistant
 - iv. Examination 50.00
 - v. Re-examination 50.00
 - vi. Registration, limited practice 100.00
 - vii. Endorsement (both plenary and limited practice) 100.00
 - viii. Biennial registration (both plenary and limited practice) 60.00
- 7. Orthoptist (registration)
 - i. Registration by credentialing 25.00
 - ii. Biennial registration 60.00
- 8. Acupuncturist (registration)
 - i. Examination, including license 150.00
 - ii. Re-examination 150.00
 - iii. Endorsement 150.00
 - iv. Biennial registration 60.00
- 9. Hearing Aid Dispenser
 - i. Biennial registration 60.00
- 10. General
 - i. Recording of name change and issuance of replacement license 25.00
 - ii. Duplicate copy of license 25.00
 - iii. Preparation of certification papers for applicants to other states 25.00

(a)

BOARD OF MEDICAL EXAMINERS

Prescribing Amphetamines

Proposed Amendment: N.J.A.C. 13:35-6.7

Authorized By: Board of Medical Examiners, Edwin H. Albano, M.D., President.
 Authority: N.J.S.A. 45:9-2.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Edwin H. Albano, M.D., President
 Board of Medical Examiners
 28 West State Street
 Trenton, NJ 08608

Persons who would like the Board to hold a public hearing on any aspect of the rule should so indicate in their written submissions. The Board will thereafter decide whether, and to what extent, a public hearing shall be held and shall notify all such interested persons. The Board of Medical Examiners thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-244.

The agency proposal follows:

Summary

The Board of Medical Examiners proposes to amend subsection (c) of the rules proposed at 15 N.J.R. 516, restricting the prescription of amphetamines, to correct and clarify a prior clerical omission involving the pertinent statutory citation. N.J.A.C. 13:35-6.7(c)2 will now indicate that prescribing of Schedule II amphetamines or sympathomimetic amine drugs, for indications prohibited by (a) and (b) of the rule, will be deemed to constitute either gross or repeated malpractice, neglect or incompetence in the practice of medicine, pursuant to N.J.S.A. 45:1-21(c) and/or (d), in accordance with the circumstances of the case. The prior proposal contained an incomplete description and citation of the statute.

Social Impact

The change is not expected to have any social impact as it serves only to clarify a prior incomplete citation.

Economic Impact

The proposal is not expected to have any economic impact.

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

- 13:35-6.7 Prescribing of amphetamines and sympathomimetic amine drugs
- (a)-(b) (No change from proposal.)
 - (c) Violation of any of the foregoing shall be deemed to constitute one or more of the following:
 - 1. (No change from proposal.)
 - 2. **Gross or repeated malpractice, [gross] neglect, or [gross] incompetence in the practice of medicine, pursuant to N.J.S.A. 45:1-21(c) and/or (d); or**
 - 3. (No change from proposal.)
 - (d) (No change from proposal.)

(a)

OFFICE OF THE STATE ATHLETIC COMMISSIONER

Boxers Licensure and Medical Examination

Proposed Amendment: N.J.A.C. 13:46-5.1

Authorized By: Office of the State Athletic Commissioner,
 Jersey Joe Walcott, Chairman.
 Authority: N.J.S.A. 5:2-5, N.J.S.A. 5:2-8.

Interested persons may submit in writing, data, views or

arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Jersey Joe Walcott, Commissioner
 State Athletic Commission
 143 E. State Street
 Suite 500
 Trenton, NJ 08608

The State Athletic Commission thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-237.

The agency proposal follows:

Summary

The proposal amends N.J.A.C. 13:46-5.1 to require that boxers, as a condition to licensure or renewal of licensure, undergo medical examinations to determine whether they are physically and mentally fit for competition. The present regulation requires any boxer applying for a license to be examined by a physician or physicians and states that the Commission may order examinations of boxers at anytime. The proposed regulation requires boxers to undergo an examination at initial licensure and at renewal of licensure. The proposal requires that the boxer be examined by a physician who is certified in neurology or neurosurgery. The proposal specifies the type of examinations which must be conducted and gives the Commission authority to require any type of examination deemed necessary including computerized tomography tests. The proposal also states that the Commission may require additional examinations at any time to determine whether the boxer continues to be fit and qualified to engage in a boxing contest.

Social Impact

The State Athletic Commission will be better able to determine whether an individual is physically and mentally competent to engage in boxing matches. Requiring additional medical examinations will serve to protect the safety and well being of the individual boxer.

Economic Impact

Individuals wishing to be licensed as boxers will have to spend additional funds to undergo more extensive medical examinations.

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

- 13:46-5.1 [Physical] **Medical Examination**
- [(a) Any boxer applying for a license must first be examined by a physician or physicians who have been appointed by the Commission as examining physicians to establish both physical and mental fitness for competition.]
 - [(b) The Commission may order examinations of boxers at any time for the purpose of determining whether such boxers are fit and qualified to engage in future contests.]
 - (a) A boxer, as a condition to licensure or to the renewal of licensure by the Commission, shall undergo an examination by a physician or physicians, one of whom is certified in neurology or neurosurgery, to establish his physical and mental fitness for competition to the satisfaction of the Commission.**
 - (b) An examination within the meaning of (a) above shall mean any type of examination directed by the Commission but shall include in all cases the administration of an electrocardiogram and electroencephalogram and the conduct of a neurological examination. In appropriate cases upon the recommendation of the examining neurologist, a computerized tomography or any other test shall be administered and the results thereof and the**

recommendation of the examining neurologist forwarded to the Commission.

(c) An examination shall be made no earlier than 30 days but no later than 10 days prior to licensure, the renewal thereof or the date on which a bout is held.

(d) In addition to the examination required by (a) above, the Commission at its discretion may order such additional examinations of a boxer at any time for the purpose of determining his continued fitness and qualification to engage in a boxing contest.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

**Diversion of Service
Basis of Discontinuance**

**Proposed New Rule: N.J.A.C. 14:3-7.16
Proposed Amendment: N.J.A.C. 14:3-3.6**

Authorized By: Board of Public Utilities, Barbara A. Curran, President.

Authority: N.J.S.A. 48:2-12, 48:2-13, 48:2-20, 48:2-25, 48:3-1, 48:3-2 and 48:3-3.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Jeanne M. Fox
Regulatory Officer
Board of Public Utilities
1100 Raymond Boulevard
Newark, NJ 07102

The Board of Public Utilities thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-233.

The agency proposal follows:

Summary

The proposed new rule N.J.A.C. 14:3-7.16 and amended N.J.A.C. 14:3-3.6 provide a procedure for resolving cases wherein a utility tenant-customer is billed for service that passed through and registered on the meter but was diverted to a third party's use before entering the tenant-customer's premises. The proposal sets out to ensure that a tenant-customer whose service has been diverted and who has not cooperated in the diversion will neither be billed for the diverted service nor terminated for non-payment of the disputed (diverted) amount. While protecting the affected tenant-customer the proposal prescribes a resolution procedure that defines and designates responsibilities in the following areas:

1. Investigation and determination of diversion;
2. Correction of the diversion;
3. Correct billing of the customer and the third party beneficiary according to use; and
4. The process of communication and settlement of the dispute between all parties involved.

Currently, the tenant-customer is liable for all service that passes

through and registers on the service meter. For tenant-customers residing in multi-family residences (for example apartment buildings, co-ops, and some condominiums) this billing assignment may mean receiving bills for service never received. The problem is a function of the central location of meters in these buildings, usually in the basement, that provides the benefits of economy and convenience but also exposes lengths of service piping and wiring to the intervention of third party diverters.

Excepting the ultimate, though costly, solution of relocating all such meters within the tenant-customers' premises, this rule resolves the problem through a recognition of utility and Board responsibility in these cases. New Jersey statutes and regulations are concerned with the correct measurement of utility service and prohibit charging customers for service not consumed in particular circumstances. There is also a defined relationship between utility and tenant-customer extending beyond the meter. Based upon these statutes, regulations and the current circumstances facing tenant-customers in multi-family buildings, the rule relieves the tenant-customer of the burden of paying for and rectifying diversions. Continuation of current utility policy would contravene statutory proscriptions prohibiting unfair, unjust and unreasonable rates, practices or classifications. N.J.S.A. 48:3-1 and 3-2.

Billing under the proposed rule will proceed in the following manner. A tenant-customer may only be billed for service used and may not be terminated provided he or she pays (or makes an agreement to pay) amounts not in dispute. Determination of service used will be based upon prior use, degree day analysis and/or load study. If, however, the tenant-customer cooperated in the diversion the utility may collect from the tenant-customer for the diverted service plus related expenses.

The utility is authorized to recover from a third party benefiting from a diversion the amount for the diverted service plus all related expenses, whether that party is a customer of the utility or not. The utility may permit the amount to be amortized and, in cases of construction error, the beneficiary shall be allowed to amortize this amount in equal installments over a period of time equal to the diversion, up to a maximum of six years.

When a tenant-customer alleges that his or her bill is unexplainably high because of a diversion of service, the utility must investigate the allegation within two months. If the investigation determines that service is being diverted, the utility shall attempt to contact the landlord (including condominium associations or other owners' associations where applicable) or his or her agent and instruct him or her to correct the diversion immediately. The utility shall attempt to determine the party benefiting from the diversion. The tenant-customer seeking relief shall provide the utility with the name and address of the landlord or his or her agent and of the party benefiting from the diversion, if known. The utility shall furnish a written report of its investigation to the tenant-customer, the landlord, and the third party beneficiary (hereafter "all parties").

The utility shall attempt to reach an agreement with all parties involved within two weeks of the completion of the investigation. In lieu of such an agreement, the utility shall schedule a conference to be held at a mutually convenient time and place. At this conference the utility shall do the following:

1. Act on behalf of the tenant-customer;
2. Negotiate adjustment of the bill and payments;
3. Attempt to have the landlord or his or her agent agree to make the piping and/or wiring changes within a specified time, if such corrections have not already been made; and
4. Provide all parties with a copy of these regulations.

Following the conference the utility shall make available a detailed summary report of the conference. In the absence of an agreement or if the piping and/or wiring corrections have not been made, the customer will continue to be billed only for service used. The method for calculating that amount shall be forwarded by the utility to all parties and made a part of the detailed summary. If an agreement cannot be reached at the conference, the utility shall

inform all parties that they may request Board of Public Utilities intervention within two weeks of the conference date.

The utility may not terminate service until the following has occurred:

1. Three weeks have elapsed after the conference and no Board intervention has been sought; or

2. The Board has rendered a decision on a formal or informal petition, per the above paragraph.

Each electric and/or gas utility shall send a separate notification, approved by the Board, to its customers semi-annually explaining that they may not be billed for diverted service. Additionally, each utility shall retain records on diversion complaints pursuant to N.J.A.C. 14:3-6.1 and 7.8.

Social Impact

The proposed rule would have a positive impact upon parties affected in diversion of service cases. Most directly it would benefit tenant-customers who, under current circumstances, are left to their own resources in attempting to remedy diversions. Diversion of service is primarily an occurrence in low-income inner city apartment buildings, where tenant-customers generally lack the resources necessary to pursue an investigation and correct the diverted pipes or wires. Oftentimes, the most practical option is to simply move to another apartment under an assumed name or into another service territory, in which case the next tenant-customer moves in to face the same situation. The alternatives are to attempt to pay what may be a continuous and unaffordable amount to cover the bill or to endure termination, either of which would produce a deterioration in standard of living. The effects of these circumstances upon the health and welfare of the elderly and children could be very adverse.

The proposed rule would eliminate the economic hardships associated with exorbitant bills and ensure that such necessities as heat and cooking fuel are not unnecessarily interrupted. Furthermore, the rule would present unscrupulous landlords and tenants with a formidable deterrent: they would be pursued for collection not by an ill-equipped tenant but by a utility company.

Economic Impact

The proposed rule would accrue economic benefits to all ratepayers by lowering the uncollectibles account. When tenants either abandon or receive bills they cannot pay, all ratepayers suffer as these accounts are recovered through increased rates. An efficient utility collection operation adapted to diversion cases will increase collections of what would otherwise be lost accounts. This development has been confirmed in New York where a similar rule is in effect.

The proposal would economically benefit tenant-customers through maintenance of a favorable billing and credit record. The utility would benefit through a higher rate of collection, vis-a-vis the current situation, and therefore mitigate cash flow difficulties.

Depending upon the number of complaints directed to the Board of Public Utilities, there may be need for additional personnel in the Bureau of Service Inspection. The New York Public Service Commission's Customer Service Division handled roughly 3,000 initial complaints since implementation of the New York rule in April, 1982. Approximately 90 percent of the complaints referred to the proper utility (the prescribed first step) where fully resolved there. The appreciably greater number of customers within the New York Commission's jurisdiction indicates the New Jersey Service Inspection Bureau will not be overwhelmed. However, this will depend upon the efficiency of the utilities' implementation of the policy. The level of efficiency in inspection and collection should increase over time given the experience in other states.

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

14:3-3.6 Basis of discontinuance of service

(a) The utility shall, upon reasonable notice, when it can be reasonably given, have the right to suspend or curtail or discontinue service for the following reasons:

1.-2. (No change.)

3. For any of the following acts or omissions on the part of the customer:

i. Nonpayment of a valid bill due for service furnished at a present or previous location. However, nonpayment for business service shall not be a reason for discontinuance of residence service **except in cases of diversion of service pursuant to N.J.A.C. 14:3-7.16;**

ii.-xi. (No change.)

4. (No change.)

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

14:3-7.16 Diversion of service

(a) **The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.**

"Landlord" means both those persons who lease residential dwellings, as well as condominium associations or other owners' associations in instances where occupants own their premises in a multi-family building.

"Premises" are those areas of the residence where service outlets are visible and under the direct control of the tenant-customer of record.

"Tenant-customer" is a residential customer of record whose meter is located off of his or her rented or owned premises.

"Utility" or **"company"**, means those public electric and/or natural gas utilities under the jurisdiction of the Board of Public Utilities.

(b) Each electric and/or gas utility shall file tariff amendments to eliminate any provisions that require tenant-customers to pay for service where service is supplied outside their premises without the tenant-customers' consent.

(c) Each electric and/or gas utility shall notify tenant-customers who apply for service that if the utility's tariff provides for billing through one meter for the tenant-customers' own usage and for service outside the tenant-customers' premises, the tenant-customers may not be required to pay for such outside service absent their consent for such service.

(d) Investigation of alleged diversions shall be conducted as follows:

1. Where a tenant-customer alleges that the level of consumption reflected in his or her utility bill is unexplainably high because of a diversion of service, the utility shall investigate the allegation within two months.

i. The utility shall have the right of reasonable access for inspection purposes pursuant to N.J.A.C. 14:3-3.8.

ii. If, as a result of such investigation, the utility determines that the service from the pipes and/or wires serving the tenant-customer, but not on his or her premises, has been diverted, the utility shall attempt to notify the landlord or his or her agent and instruct him or her that the diversion must be corrected immediately. However, this provision shall in no way prohibit a utility from disconnecting service if the utility determines that an unsafe condition exists.

2. The utility shall attempt to determine the identity of the party benefiting from such diverted service.

i. A tenant-customer seeking relief shall be responsible for furnishing the identity and address of the landlord or agent to the utility, and of the benefiting party, if known.

ii. Additionally, the tenant-customer shall provide any other information which may assist the utility in its investigation.

3. The utility shall furnish a report in writing on the findings of its investigation to the tenant-customer, the tenant-customer's landlord, and to the party benefiting from the diverted service (if different from the landlord). The utility

shall attempt to reach an agreement with the parties involved or, in lieu of such agreement, proceed to the conference described in (g) below.

(e) Service shall be continued as follows:

1. As of the date of the tenant-customer's allegation, the utility shall continue the tenant-customer's service provided the tenant-customer pays (or makes an agreement to pay) amounts not in dispute.

2. A utility may not terminate service to a customer involved in a diversion dispute until the following has occurred, whichever is latest:

i. Three weeks have elapsed after the conference ((g) below) and no Board intervention has been sought; or

ii. The Board has rendered a decision on an informal or a formal petition, if such is filed as described in (i) below.

(f) Billing where diversion has occurred shall be as follows:

1. The tenant-customer whose service has been diverted by another party shall be billed by the utility only for service used, based upon prior use, degree day analysis and/or load study, whichever is appropriate.

2. In cases where the utility cannot identify the party benefiting from the diversion, the tenant-customer shall not be liable for the diverted service.

i. If the utility identifies the party benefiting from the diversion, the utility shall bill that beneficiary for the excess usage which is not attributable to the tenant-customer whose service has been diverted plus all related expenses incurred by the utility in accordance with the company's tariff.

ii. If the beneficiary has an existing account, the utility shall bill that account.

3. In cases where the diversion of gas or electricity is a result of a construction error in the pipes and/or wires which was not the responsibility of the utility, the account of the tenant-customer involved shall be adjusted to charge only for service used based upon a prior use and/or degree day analysis, whichever is appropriate.

4. In instances where the tenant-customer benefited from or cooperated in the diversion, the utility may collect from the tenant-customer of record for the diverted service plus that portion of the related expenses incurred by the utility in accordance with the company's tariff.

5. The utility may permit the beneficiary to amortize the amount due for the diverted service. In cases of diversion due to construction error, the company shall allow the customer to amortize the amount due for the diverted service in equal installments over a period of time equal to the period of the diversion, for up to a maximum of four years.

(g) If an agreement has not been reached within two weeks after the completion of the utility's investigation, the utility shall invite the landlord, tenant-customer and any other parties which it has reason to believe may be involved with the diversion to a conference with a company representative. Reasonable efforts shall be made to schedule the conference at a mutually convenient time and place.

1. Prior to the conference, the utility shall attempt to have the landlord correct the diversion through rewiring and/or repiping. If the landlord or his or her agent fails to appear or to eliminate the diversion, the utility shall adjust the beneficiary's and the tenant-customer's billing and future bills by the process described in (f) above.

2. At the conference, the parties shall negotiate the adjusted billing and payments pursuant to (f) above.

3. At the conference, the utility shall have the burden of presenting the results of its investigation and seeking remuneration from the beneficiary.

4. An attempt shall be made at the conference to have the landlord or his or her agent file an agreement with the tenant-customer and the utility that necessary corrections to the facilities shall be made within a specified time. Any such

agreement shall also provide that if a specified time period elapses without corrections having been made, the tenant-customer shall be provided with an automatic bill adjustment.

5. At the conference, the utility shall provide all parties with a copy of these regulations.

6. The utility shall keep and make available to all parties upon request a detailed summary of the conference which shall include determinations, conclusions, and the names of the participants.

(h) After the conference, in the absence of an agreement by the parties involved, the utility shall bill the tenant-customer only for service metered, less the estimated amount of service diverted pursuant to (f) above. The utility shall explain in writing its method of calculating the amount of service billed, forward such to all parties by certified mail, return receipt requested, and make such writing a part of the detailed summary.

(i) If an agreement cannot be reached at the conference, the landlord, tenant-customer and party benefiting from the diversion shall be advised by the utility that, within two weeks of the conference date, they may request Board intervention.

(j) Each electric and/or gas utility shall send the following notice to its customers semi-annually:

Pursuant to Board of Public Utilities regulation, no tenant-customer may be billed or disconnected for failure to pay for electric and/or gas service which was diverted outside of his or her premises without the tenant-customer's permission. Upon suspecting that his or her utility bill is unexplainably high because of a diversion of service, the tenant-customer should notify the utility immediately by calling the following number:_____.

(k) The utility shall keep records of diversion complaints and their resolution in accordance with the Board's existing regulations governing customer record retention per N.J.A.C. 14:3-6.1 and 14:3-7.8.

(l) A statute of limitations of four years is established for retroactive correction of billings.

ENERGY

(a)

THE COMMISSIONER

Energy Conservation

Proposed Readoption with Amendments: N.J.A.C. 14A:3-1, -2, -3, -4, -6, -7, -8, and -9

Authorized By: Leonard S. Coleman, Jr., Commissioner,
Department of Energy.
Authority: N.J.S.A. 52:27F-11q.
DOE Docket No. 001-83-04.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Linda M. Scurzo, Esq.
Office of Regulatory Affairs
Department of Energy
101 Commerce Street
Newark, NJ 07102

The Department of Energy thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66 (1978), this rule would otherwise expire on August 3, 1983. The re-adoption of the existing rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of their adoption. The concurrent amendments to the existing rules become effective upon publication in the Register of a notice of their adoption.

This proposal is known as PRN 1983-249.

The agency proposal follows:

Summary

The Department of Energy was created to provide comprehensive energy planning in New Jersey. The Energy Conservation rules that are the subject of this proposed re-adoption were some of the first formulated by the Department. For the most part the needs and problems that these rules originally addressed still exist today. For this reason, subchapters 1 to 4 and 7 to 9 will be proposed for re-adoption. Subchapter 5 is currently reserved and subchapters 10 and 11 are assigned a separate expiration date. Subchapter 6 is not proposed for re-adoption but will be allowed to expire since the subject matter contained therein has been superseded by Federal regulations.

Subchapter 1 contains the general provisions applicable to Chapter 3 in its entirety. It explains the purpose of the chapter and the manner in which variances and exemptions from the provisions of the chapter may be obtained. Subchapter 1 is proposed without change.

Subchapter 2 establishes standards for large boiler efficiency and states the manner in which such boilers are to be tested for efficiency. This subchapter also requires a certificate of compliance to be posted after the large boiler has been tested. The subchapter is proposed without change.

Subchapter 3 establishes annual test procedures maintenance standards for oil-fired heating units. Two technical changes are made in the regulations. Reference has been made to the updated versions of certain standards. Reference to the Office of Technical Assistance will be deleted as that office no longer exists in the Department. In addition section 3.3 will be proposed for deletion because the Department compiled a list similar to that required herein in another program. The deletion will eliminate duplication of effort by the Department.

Subchapter 4 sets thermal efficiency standards for new and renovated buildings. The standards form the substance of the energy subcode of the State's Uniform Construction Code. Since these requirements were recently revised, no changes have been proposed for this subchapter.

Subchapter 5 is reserved and therefore, is not scheduled to expire.

Subchapter 6 requires the retrofit of gas pilot lights. This subchapter has not been enforced by the Department because it was superseded by Federal requirements. It will be allowed to expire.

Subchapter 7 requires all newly constructed or renovated buildings to be submetered and prohibits the use of master metering. No changes have been made to this subchapter.

Subchapter 8 sets lighting standards for new and renovated buildings. The standards are contained in the Illuminating Engineering Society (IES) Standard in the Lighting Energy Management (LEM-1) manual. The procedure for calculating the lighting standards is unchanged in the proposed re-adoption. However, the titles of the manuals have been changed by IES; the Department has reflected these accordingly in the regulations.

Subchapter 9 establishes lighting efficiency standards for

existing buildings. The standards can be determined using either the IES Lighting Energy Management (LEM-1) manual or the Department's Rapid Estimating Method. A subsection was added requiring owners or operators of affected buildings to post a certificate of compliance indicating that the building meets the lighting standards. This requirement is not new, it was formerly codified as N.J.A.C. 14A:3-10.

Social Impact

In the 1970's the shortages caused by the oil embargoes sharply increased the prices paid by New Jersey consumers for energy. The social and economic consequences of energy supply dislocations highlighted the need to reduce New Jersey's dependence on foreign energy sources.

The Department developed the regulations contained in Chapter 3 in order to encourage energy conservation in areas where significant waste existed and the Department foresaw that significant headway could be made.

Although it is envisioned that the regulations will apply uniformly to all members of the regulated groups it is possible that in a particular case compliance may be unduly burdensome. Flexibility is needed in almost every regulatory context in order to address individual needs and unique situations. Subchapter 1 contains variance and waiver provisions intended to achieve this result.

Requiring large boilers and oil-fired heating units to be evaluated periodically (N.J.A.C. 14A:3-2 and -3) and to comply with certain standards ensures that they will be operated at adequate levels of efficiency. Large boilers and oil-fired heating units that are properly maintained and operated save energy money for their owners. Periodic maintenance also increases the likelihood that problems with the systems will be detected and, therefore, remedied earlier, avoiding the need for expensive large scale repairs at a later date.

The thermal efficiency requirements for new and renovated buildings contained in N.J.A.C. 14A:3-4 form the energy subcode of the State Uniform Construction Code. The Department is required by law to promulgate these standards. See N.J.S.A. 52:27D-121. The standards ensure that all new construction and renovations are made in a way that maximizes energy efficiency.

Individual electric metering in residential buildings is mandated by N.J.A.C. 14A:3-7. Data indicate that residents tend to conserve more electricity when their apartments are submetered. Submetering enables residents of an apartment to see that a direct correlation exists between their energy consumption and their utility bills. In a master metered apartment building the utility bill for any particular apartment is determined by averaging the total cost of electricity used in the building by the total number of apartments. Thus a resident who conserves energy in his apartment still pays a share of his wasteful neighbor's utility bill. Master metering is, therefore, a disincentive to conserving energy.

Lighting efficiency standards are set for new and renovated buildings in N.J.A.C. 14A:3-8 and for existing buildings in N.J.A.C. 14A:3-9. The standards are designed to ensure that the lighting requirements of a building are met without unnecessarily using energy. Since the buildings that must comply with lighting efficiency standards (for example, business, institutional and mercantile buildings, factories and storage facilities) represent the bulk of the building use groups found in New Jersey significant energy savings can be realized as a result of the regulations.

Economic Impact

Past experience indicates any economic burdens that may be imposed on regulated groups by each of the sections of Chapter 3 are minimal in comparison to the energy and dollar savings that can be realized.

Subchapter 1, on the other hand, will have no adverse economic effect on regulated entities. In fact, the variance provisions are employed so that persons who can show that a particular regulation would work a great financial hardship may be excused by the Department from compliance.

The cost of the boiler or heating unit efficiency test is recovered by the owner because his annual fuel bills are less since the unit operates more efficiently. The cost of ensuring that new and renovated buildings conform to thermal efficiency standards is likewise, recovered by the owner through a reduction in energy use by the building.

Individually metered residences use as much as 20 percent less electricity than master metered buildings. Although the building owner's construction costs may be reduced by installing one master meter rather than several individual meters, this saving pales in comparison to the ultimate savings which can be realized by the individually metered apartment residents. Since the cost of installing individual meters is most likely passed on to the residents, the economic justification for master metering becomes even less tenable.

The cost of complying with lighting efficiency standards for new and renovated buildings are generally insignificant in comparison to the total cost of the building or renovation. Since compliance is required from the outset of construction the need to modify other parts of the building to accommodate the efficiency standards will not arise. Thus, the only costs associated with compliance would be those associated with building the efficiency requirements into the structure. Even in the case of retrofitting existing buildings to meet the efficiency standards the cost is not especially large; generally the retrofit cost can be recovered in energy savings over a simple payback period of less than two years. In all cases savings in the amount of electricity used will continue to accrue over the life of the building. So, a one-time investment will generate economic benefits for many years.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 14A:3.

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

14A:3-3.2 Definitions

"Smoke scale" means a photometric scale to which the filter paper stained by the flue gas sample extracted by the smoke tester is compared to determine the smoke condition of the unit. A smoke scale shall be considered approved if it is constructed and operated in accordance with [ANSI Z 11.182 OF] ASTM D 2156-[65] **80**.

"Smoke tester" means a device used to extract a sample of flue gas. A smoke tester shall be considered approved if it is constructed and operated in accordance with [ANSI Z 11.182 or] ASTM D 2156-[65] **80**.

14A:3-3.3 [Listing requirement] **(Reserved)**

[(a) The Department shall maintain a list of all fuel oil suppliers, heating contractors or persons who offer maintenance service to customers. This list shall be available to the public at the Department's offices during business hours; and

(b) All fuel oil supplies, heating contractors and persons who offer maintenance shall furnish the following information to the Department within thirty (30) days:

1. Name of corporation, partnership or individual;
2. Business address; and
3. Business telephone number.]

14A:3-3.7 Department inspection

(a) (No change.)

(b) All inspection requests shall be made in writing to the Department of Energy, [Office of Technical Assistance,] 101 Commerce Street, Newark, New Jersey, 07102; and

(c) (No change.)

SUBCHAPTER 6. [RETROFITTING OF GAS PILOT LIGHTS] **(RESERVED)**

14A:3-6.1 Scope

The requirements of this subchapter shall apply to all gas fired appliances.

14A:3-6.2 Requirements

Each public utility which distributes natural gas shall develop a conservation program designed to replace continuously burning pilot lights with automatic electric ignition systems or an acceptable alternative for residential home heating systems as well as other appliances according to energy efficiency, conservation, engineering and economic benefits.

14A:3-6.3 Filing

Each gas utility shall file said program, within 90 days of adoption of this subchapter, along with its underlying study, upon the Commissioner of the Department of Energy. The Commissioner shall approve or disapprove said program within 60 days of the filing date. Any program not approved by the Commissioner shall be resubmitted within 30 days according to direction provided by the Commissioner.

14A:3-6.4 Commencement of study

Within 60 days of approval hereof, all gas distribution utilities shall initiate the program described in N.J.A.C. 14A:3-6.2. The utilities shall include in such study an evaluation of any offsetting engineering or economic liabilities for each separate type of appliance. The utilities shall coordinate their studies to insure that similar criteria are used by each utility.

14A:3-6.5 Exemptions

Each program submitted pursuant to this subchapter may provide for exemptions therefrom in cases where a demonstrable hardship exists. The Commissioner shall, in approving the retrofitting program, provide for criteria to be employed in granting exemptions.]

14A:3-8.2 Standards

Effective immediately, all newly constructed or renovated buildings shall conform to the lighting standards set forth in [one of the following:

1. The Illuminating Engineering Society (IES) Standard EMS-1: Lighting Power Budget Determination Procedure; or
2. The IES Lighting Power Budget Determination by the Unit Power Density Procedure EMS-6] **the Illuminating Engineering Society (IES) LEM-1 Lighting Energy Management manual.**

Copies may be obtained from: IES, 345 East 47th Street, New York, New York 10017.

14A:3-9.1 Scope

(a) The standards set forth in N.J.A.C. 14A:3-9.2 shall apply to all existing buildings in the following Use Groups as defined by the Building Subcode of the Uniform Construction Code: Use Groups A, B, F, H, I, M, P, S and T. Use Groups R-3, R-4 and residential portions of R-1 and R-2 are specifically exempted from the standards provided for in this subchapter.

(b) In addition to the groups of buildings specifically exempted from N.J.A.C. 14A:3-9.2 in the above paragraph, N.J.A.C. 14A:3-9.1(a), all exceptions to criteria adopted by the Illuminating Engineering Society (IES) [Recommended Procedure for Lighting Energy Management of Existing Buildings EMS-4] **LEM-1 Lighting Energy Management manual** are exempted from the standards provided for in this subchapter.

14A:3-9.2 Standards

(a) Effective February 1, 1979, all existing buildings as defined in N.J.A.C. 14A:3-9.1 shall conform to the lighting standards set forth in one of the following:

- 1. The Illuminating Engineering Society (IES) [Recommended Procedure for Lighting Energy Management of Existing Buildings EMS-4] **LEM-1 Lighting Energy Management manual**; or
- [2. The IES Lighting Power Budget Determination by the Unit Power Density Procedure EMS-6; or]
- [3] **2.** The New Jersey Department of Energy's Rapid Estimating Method (REM) Way to Lower Lighting Costs.

14A:3-9.5 Certificate of compliance

(a) **The owner or operator of a building covered by this subchapter shall, within 60 days of the effective date of this subchapter, complete in accordance with instructions provided by the Department, and post in a prominent location within the building, a "Certificate of Compliance." The owner or operator shall certify on the certificate that the building is in compliance with this subchapter.**

(b) **It shall be deemed a violation of this chapter, for an owner or operator to knowingly provide false, misleading or incomplete information on or to omit required information from the certificate.**

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

**Restricted Parking and Stopping
Route 35**

Proposed Amendment: N.J.A.C. 16:28A-1.25

Authorized By: John P. Sheridan Jr., Commissioner,
Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and
39:4-199.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
Trenton, NJ 08625

The Department of Transportation thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the New Jersey Register of a notice of adoption.

This proposal is known as PRN 1983-225.

The agency proposal follows:

Summary

The proposal will establish "no parking" zones along Route 35 in Old Bridge Township, Middlesex County at established bus stops for the efficient flow of traffic and the safety of the populace. The amendment has been requested by the local officials of Old Bridge Township after passage of an ordinance and receipt of comments from a public hearing. The amendment was found to be necessary following engineering studies conducted by the Bureau of Engineering, Department of Transportation. The Department, therefore, proposes to amend N.J.A.C. 16:28A-1.25 pursuant to the findings of the engineering studies. Appropriate signs will be erected to advise the motoring public.

Social Impact

The amendment will restrict parking along the areas designated as bus stops for the efficient on/off loading of passengers and the enhancement of the safety of the populace in Middlesex County.

Economic Impact

The Department will incur direct and indirect costs for its workforce for mileage, personnel and equipment requirements.

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

16:28A-1.25 Route 35

(a) (No change.)

1.-20. (No change.)

(b) The certain parts of State highway Route 35 described [herein below] **in this section** shall be [and hereby are] designated and established as "no parking" zones where parking is prohibited at all times. [and in] **In** accordance with the provision of N.J.S.A. 39:4-[139]**199** permission is [hereby] granted to erect appropriate signs at the following established bus stops:

1.-4. (No change.)

5. Along the northbound (easterly) side in Old Bridge Township, Middlesex County:

i. Laurence Harbor Parkway (near side):

(1) Beginning at the southerly curb line of Laurence Harbor Parkway (westbound) and extending 64 feet southerly therefrom.

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

(c) (No change.)

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS

**State Health Benefits Program
Premiums and Coverage
Administrative Corrections**

Proposed Amendment: N.J.A.C. 17:9

Authorized By: State Health Benefits Commission, William
J. Joseph, Secretary.
Authority: N.J.S.A. 52:14-17.27.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

William J. Joseph, Secretary
State Health Benefits Commission
Division of Pensions
20 West Front Street
CN 295
Trenton, NJ 08625

The State Health Benefits Commission thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-227.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 17:9-5.11 which changes the word "premiums" to "charges" reflects a technical change in the payments made under the plans. Under the flexible financing system recently instituted in the health benefits area, payments that were previously identified as premiums are now categorized as charges. The changes in terminology of premiums versus charges in no way alters the benefits that were available to participants in the program. The amendments merely reflect a change in the technical definition of the payments made.

Pursuant to N.J.A.C. 1:30-2.7, the proposal also makes various editorial changes throughout N.J.A.C. 17:9. Wherever the masculine gender "he", "his" or "himself" appears, the feminine gender "she", "her" or "herself" will be added. Also, at N.J.A.C. 17:9-4.1 and 4.2 the New Jersey College of Medicine and Dentistry has been changed to the University of Medicine and Dentistry of New Jersey.

Social Impact

These proposed amendments will not have any significant social impact upon participants in the State Health Benefits Program because they are merely editorial changes and do not alter any substantive rules or procedures in the Program.

Economic Impact

The proposed amendments will not have any adverse economic effect upon the public employees or employers participating in the Program.

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

17:9-4.1 State employee defined

(a) For purposes of State coverage, "employee" shall mean an appointive or elective officer of full-time employee of the State including employees of:

1.-3. (No change.)

4. [New Jersey College] **University** of Medicine and Dentistry of **New Jersey**;

5. (No change.)

17:9-4.2 State; full-time defined

(a) For purposes of State coverage, "full-time" shall mean:

1.-4. (No change.)

5. Employees of the [New Jersey College] **University** of Medicine and Dentistry of **New Jersey** who are paid for a minimum of 20 hours per week, notwithstanding [section 4 of this subchapter] **N.J.A.C. 17:9-4.4**;

6. (No change.)

17:9-5.11 [Premiums] **Charges** and coverage; 10-month employees

(a) Employees hired as of September 1 under a 10-month contract shall have [premiums] **charges** deducted from the wages they received in September to establish their coverage as of the beginning date of their employment. In order to continue a 10-month employee's coverage during the months of July and August, sufficient [premiums] **charges** will be deducted prior to the expiration of their 10-month contract to continue their coverage during the heretofore mentioned months, provided their employment resumes in September.

(b) (No change.)

(a)

DIVISION OF PENSIONS

**State Health Benefits Program
Terminating Employer; List of Names and
Addresses**

Proposed Amendment: N.J.A.C. 17:9-1.5

Authorized By: State Health Benefits Commission, William J. Joseph, Secretary.

Authority: N.J.S.A. 52:14-17.27.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

William J. Joseph, Secretary
State Health Benefits Commission
Division of Pensions
20 West Front Street
CN 295
Trenton, NJ 08625

The State Health Benefits Commission thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-232.

The agency proposal follows:

Summary

The proposed amendment would permit an employer who is terminating participation in the State health benefits program to receive a list from the Division of Pensions of the names and addresses of the participants whose coverages would be affected by that employer's termination in the program.

Social Impact

Public employers who terminate their participation in the State health benefits program, as well as their employees or retirants and beneficiaries affected by such a termination, may be affected by this proposal.

Economic Impact

Although the decision to terminate participation in the program may affect the public employer's employees, retirants or beneficiaries, this particular proposal will not have any adverse economic impact upon such persons.

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

17:9-1.5 Voluntary termination of employer; notice

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

(d) The Division of Pensions shall act to notify all retired employees or survivors of the termination of coverage **and to send a list of the names and addresses to the terminating employer for his or her information, upon his or her request.**

(a)

STATE INVESTMENT COUNCIL

Certificate of Deposit

Proposed Amendments: N.J.A.C. 17:16-27.1
27.2 and 27.3

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.
Authority: N.J.S.A. 52:18A-91.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Roland M. Machold, Director
Division of Investment
349 West State Street
Trenton, NJ 08625

The State Investment Council thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-234.

The agency proposal follows:

Summary

The proposal would: (1) clarify the wording related to the definition of domestic banks; (2) change the required ratio of capital to assets to conform to the capital classifications issued by the Federal Reserve Board and the Comptroller of the Currency. Heretofore, banks were required by the State Investment Council to have a ratio of capital to assets of at least 4 percent. The guidelines, issued in December 1983, call for a minimum capital ratio of 6 percent for banks with assets of less than \$1 billion; 5 percent for banks with assets between \$1 to \$15 billion; and no limitation for banks with assets in excess of \$15 billion; (3) delete a requirement that the bank issuing the certificate of deposit pay dividends on the basis of percent of par value, a requirement which is obsolete in the context of modern banking practice; (4) revise the eligible list of United States Government agency securities which may be used as collateral for collateralized certificates of deposit to include only those agencies which presently have securities outstanding or are presently authorized to issue securities; (5) change the maturity limitation of eligible collateral from seven to 10 years, providing more flexibility; (6) include bankers acceptance as well as certificates of deposit in calculating the limit of 25 percent of a bank's net worth, since bankers acceptances and certificates of deposit have similar credit characteristics; (7) add the New Jersey Building Authority to the list of authorities and agencies to be considered in calculating the 25 percent limit; and (8) eliminate individual certifications by a member of the Division staff that the securities under consideration qualify as a legal investment under this regulation and substitute purchases of certificates of deposit from a list of banks approved and certified by the Director and a member of the staff of the Division of Investment.

Social Impact

The regulation changes are intended to clarify, conform, delete, revise, augment, quantify, update and refine regulations being used by Division personnel in the management of monies in light of the current financial climate. Redefinition of various rules will provide more efficient management and use of time by Division personnel. The proposed changes will not materially change the list of eligible

banks, but will provide for greater ease in monitoring bank financial statements.

Economic Impact

The changes are all made to provide more efficient use of time by Division personnel as well as more efficient management of funds and will ultimately result in dollar savings in the administration of the functions of the Division.

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

SUBCHAPTER 27. CERTIFICATES OF DEPOSIT

17:16-27.1 Permissible investments

(a) Subject to the limitations contained in this subchapter, the Director may invest and reinvest monies of any pension and annuity, static, demand, temporary reserve or trust group fund in uncollateralized certificates of deposit of commercial banks provided that:

1. The investment in the certificate of deposit is limited to a term of one year or less;
2. The issuer of the certificate of deposit is a bank or trust company [doing business anywhere within] which:
 - i. Is headquartered in the United States; [which]
 - ii. Is not controlled by a foreign entry; and
 - iii. Is [is] a member of the Federal Reserve System; and
3. The issuer, at the date of its last published [statement] balance sheet preceding the date of investment:
 - i. Had a combined total of capital stock, surplus, reserve for contingencies and undivided profits equal to at least \$40,000,000; and [also equal to at least 4 percent of its total assets; and]
 - ii. Had consolidated assets exceeding \$15 billion, or, if consolidated assets were less than \$15 billion, had the following minimum ratio of primary capital to total assets (as defined by the Federal Reserve Board):

Assets	Minimum primary Capital Ratio
\$1 billion to \$15 billion	5%
Less than \$1 billion	6%

[(4) The issuer, in each of the five fiscal years preceding the date of investment, paid dividends in cash of not less than 4% on its common stock without having reduced the aggregate par value thereof within such five-year period.]

(b) Subject to the limitations contained in this subchapter, the Director may invest and reinvest moneys of any pension and annuity, static, demand, temporary reserve or trust group fund in collateralized certificates of deposit provided that:

1. The investment in the certificate of deposit is limited to a term of one year or less;
2. The issuer is a bank or savings and loan association [doing business anywhere within] which:
 - i. Is headquartered in the United States; and
 - ii. Is not controlled by a foreign entity;
3. The issuer demonstrates the capacity to wire collateral against payment through the Federal Reserve System to a designated custodian bank;
4. The issuer provides collateral against payment consisting of United State Treasury obligations or obligations of the following United States Government agencies:
 - [i. Banks for Cooperatives;]
 - [ii. Federal Farm Credit Banks;
 - [iii. Consolidated Systemwide Bonds;]
 - [iv. Federal Financing Bank;
 - [v. Federal Home Loan Banks;
 - [vi. Federal Intermediate Credit Banks;]
 - [vii. Federal Land Banks;]
 - [viii. Federal National Mortgage Association.]

5. At the time of purchase the market value of the collateral provided under (b) of this section, shall be equal to at least 120 percent of the purchase price of the certificate of deposit; and
6. The securities selected as collateral shall have a maturity not exceeding [seven] 10 years from the date of the purchase of the certificate of deposit.

17:16-27.2 Other limitations

(a) The total [amount of] investment in the certificates of deposit of [in] any one bank, combined with the total investment in the bankers acceptances of any one bank, shall not exceed 25 percent of [a] the bank's net worth designated as capital, surplus and undivided profits. In making this calculation, certificates of deposit and bankers acceptances purchased for the following State agencies will be taken into account:

1. New Jersey Housing Finance Agency;
2. New Jersey Educational Facilities Authority;
3. New Jersey Sports and Exposition Authority;
4. New Jersey Health Care Facilities Financing Authority;
5. New Jersey Mortgage Finance Agency;
6. New Jersey Economic Development Authority[.];
7. **New Jersey Building Authority.**

17:16-27.3 Legal papers

Prior to any commitment to purchase obligations of the type described in this subchapter, [the director shall have obtained a certification signed by a member of the division's staff and endorsed by the director stating that, in their opinion,] **it shall have been ascertained that the security under consideration [qualifies as a legal investment under this regulation] is included on a list of banks which has been certified by the Director and a member of his staff as having met the requirements of this regulation.**

(a)

STATE INVESTMENT COUNCIL

Repurchase Agreements

Proposed Amendments: N.J.A.C. 17:16-37.1 and 37.2

Proposed Repeal: N.J.A.C. 17:16-37.3 and 37.4

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.
Authority: N.J.S.A. 52:18A-91.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Ronald M. Machold, Director
Division of Investment
349 West State Street
Trenton, NJ 08625

The State Investment Council thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of notice of adoption.

This proposal is known as PRN 1983-235.

The agency proposal follows:

Summary

The proposal would limit repurchase agreements to commercial

banks by excluding brokerage firms. A recent court decision disallowed the sale of United States Government securities supporting repurchase agreements purchased by a brokerage firm, stating that owners of the brokerage firm's repurchase agreements were secured creditors, and that the sale of repurchase agreements by the dealer represented a secured borrowing, not a sale of securities. However, banks are covered by a separate bankruptcy law and the Federal Deposit Insurers Corporation has confirmed that owners may sell these securities without challenge by that agency.

The proposal would also delete an approved list of banks and government dealers for repurchase agreements, since the regulation limits purchases to short maturities (not exceeding 15 days) and requires that the market value of the collateral shall be 102 percent of the par value of the repurchase agreement, thus providing creditworthy instruments. Greater latitude will be provided in the selection of banks able to meet these requirements without restricting the selection to a preordained list.

The proposal will also conform the collateral requirements to those pertaining to certificates of deposit. The proposal would reduce the maximum maturity from 30 to 15 days to provide sufficient protection from loss of collateral value in today's volatile interest rate environment.

Social Impact

There will be no direct effect upon the public. The proposal is designed to increase protection for the funds being invested and may serve to reduce the potential for any loss on the use of repurchase agreements.

Economic Impact

No costs are involved in the implementation of the rule. The proposal is intended to maximize efficient management of funds under the jurisdiction of the Division and to conform to standards of prudence established by the Council regulations.

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

17:16-37.1 Permissible investments

(a) Subject to the limitations contained in this subchapter, the Director may invest and reinvest moneys of any pension and annuity, static, demand, temporary reserve or trust group fund in repurchase agreements [involving United States Treasury obligations and United States Government Agency obligations. In this connection the approved list of United States Government Agencies is as follows:] **of any bank, provided that:**

1. Federal Intermediate Credit Banks;
2. Federal Home Loan Banks;
3. Federal National Mortgage Association;
4. Federal Land Banks;
5. Banks for Cooperatives;
6. Federal Financing Bank;
7. Federal Farm Credit Banks Consolidated Systemwide Bonds.]

1. The seller is a bank or trust company which:
i. Is headquartered in the United States; and
ii. Is not controlled by a foreign entity.

2. The seller demonstrates the capacity to wire collateral against payment through the Federal Reserve System to a designated custodian bank; and

3. The security sold by the bank and subject to repurchase is an obligation of the United States Government or an obligation of the following United States Government agencies:

- i. Federal Farm Credit Banks Consolidated Systemwide Bonds;**
- ii. Federal Financing Bank;**
- iii. Federal Home Loan Banks; and**
- iv. Federal Land Banks.**

17:16-37.2 Limitations

The maturity of [R]epurchase agreements shall not exceed [a period of 30 days and shall require a minimum of 102 percent collateralization.] 15 days. At the time of purchase, the market value of the securities delivered pursuant to the repurchase agreement shall be equal to at least 102 percent of the par value of the repurchase agreement. The securities [accepted as collateral] delivered shall have a maturity not exceeding 10 years from the date of the repurchase agreement.

17:16-37.3 [Pension and annuity group; static group; demand group temporary reserve group; trust group] (Reserved)

[The Director shall submit a list of banks and government dealers to be used for repurchase agreements to the Council for its approval. Such list may be amended from time to time subject to the Council's approval and shall be designated the "Approved List of Banks and Government Dealers for Repurchase Agreements".]

17:16-37.4 [Approved list of banks and government dealers] (Reserved)

[(a) The approved list of banks and government dealers for repurchase agreements is as follows:

- I. Banks:
 - i. Bankers Trust Company;
 - ii. The Chase Manhattan Bank, N.A.;
 - iii. Chemical Bank;
 - iv. Continental Illinois National Bank & Trust Company of Chicago;
 - v. First National City Bank;
 - vi. Morgan Guaranty Trust Company of New York.
- 2. Dealers:
 - i. The First Boston Corporation;
 - ii. Aubrey G. Lanston & Co., Inc.;
 - iii. Merrill Lynch, Pierce, Fenner & Smith, Inc.;
 - iv. Salomon Brothers.]

(a)

STATE INVESTMENT COUNCIL

Bankers Acceptances

Proposed Amendments: N.J.A.C. 17:16-39.1 and 39.3

Proposed Repeal: N.J.A.C. 17:16-39.2, 39.4 and 39.5

Proposed New Rule: N.J.A.C. 17:16-39.6

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment. Authority: N.J.S.A. 52:18A-91.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Ronald M. Machold, Director
Division of Investment
349 West State Street
Trenton, NJ 08625

The State Investment Council thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of notice of adoption.

This proposal is known as PRN 1983-236.

The agency proposal follows:

Summary

The proposal will provide for investment in bankers acceptances provided: (1) the bankers acceptances are limited to one year or less; (2) the bank or trust company must be headquartered in the United States, uncontrolled by a foreign entity and a member of the Federal Reserve System; (3) issuing banks meet standards of consolidated assets exceeding \$15 billion, or if less than \$15 billion, have a ratio of capital to assets of five percent between \$1 billion and \$15 billion, or six percent if less than \$1 billion; (4) certificates of deposit as well as bankers acceptances are both included in calculating the limit of 25 percent of a bank's net worth, since both have similar credit characteristics; (5) the New Jersey Building Authority, New Jersey Economic Development Authority and New Jersey Mortgage Finance Agency are included in the list of agencies to be considered in calculating the 25 percent limit; and (6) a list of banks approved by the State Investment Council is eliminated.

Social Impact

There will be no direct effect on the public. The rule changes are intended to update the rules now in effect in light of the current financial climate.

Economic Impact

More efficient management of funds may ultimately result in dollar savings in the operation of the division, but this cannot be calculated in dollar terms at this time. The change will provide a broader list of eligible banks, which may serve to realize better investment return, but any potential increase in return cannot be quantified.

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

17:16-39.1 Permissible investments

Subject to the limitations contained in this subchapter, the Director may invest and reinvest moneys of any pension and annuity, static, demand, temporary reserve or trust group fund in bankers acceptances of commercial banks provided that: [such obligations are legal investments for savings banks in this State.]

1. The investment in the bankers acceptance is limited to a term of one year or less;
2. The accepting institution is a bank or trust company which:
 - i. Is headquartered in the United States;
 - ii. Is not controlled by a foreign entity; and
 - iii. Is a member of the Federal Reserve Board; and
3. The issuer, at the date of its last published balance sheet preceding the date of the investment:
 - i. Had a combined total of capital stock, surplus, reserve for contingencies and undivided profits equal to at least \$40,000,000; and
 - ii. Had consolidated assets exceeding \$15 billion, or, if consolidated assets were less than \$15 billion, had the following minimum ratio of primary capital to total assets (as defined by the Federal Reserve Board):

Assets	Minimum Primary Capital Ratio
\$1 billion to \$15 billion	5%
Less than \$1 billion	6%

17:16-39.2 [Limitations imposed by the Banking Act of 1948 as amended and supplemented] (Reserved)

[Bankers Acceptances are limited to those issued by a banking institution which at the date of its last published statement had a combined total of capital total stock, surplus, reserve for

contingencies and undivided profits equal to at least \$40,000,000 and also equal to at least 5% of its aggregate deposit liability.]

17:16-39.3 Other limitations

[Bankers Acceptances in the name of any one bank combined with Certificates of Deposit in the name of that bank] **The total investment in the bankers acceptances of any one bank, combined with the total investment in the certificates of deposit of any one bank shall not exceed 25 percent of the bank's net worth designated as capital, surplus and undivided profits. In making this calculation, bankers acceptances and certificates of deposit purchased for the following State agencies will be taken into account:**

1. New Jersey Housing Finance Agency;
2. New Jersey Educational Facilities Authority;
3. New Jersey Sports and Exposition Authority;
4. New Jersey Health Care Facilities Financing Authority[.];
5. **New Jersey Building Authority;**
6. **New Jersey Economic Development Authority;**
7. **New Jersey Mortgage Finance Agency.**

17:16-39.4 [Pension and annuity group; static group; demand group; temporary reserve group; trust group]
(Reserved)

[The Director shall submit a list of banks to be used for repurchase agreements to the Council for its approval. Such list may be amended from time to time subject to the Council's approval and shall be designated the "Approved List of Banks for Bankers Acceptances".]

17:16-39.5 [Approved list of banks for bankers acceptances]
(Reserved)

[(a) The following is the approved list of banks for bankers acceptances:

1. Selected from 25 largest banks:
 - i. First National City Bank, New York;
 - ii. Morgan Guaranty Trust Company, New York;
 - iii. Continental Illinois National Bank and Trust Company, New York;
 - iv. First National Bank, Chicago;
 - v. Security Pacific National Bank, Los Angeles;
 - vi. Mellon Bank NA, Pittsburgh;
 - vii. First National Bank, Boston;
 - viii. National Bank of Detroit;
 - iv. First Pennsylvania Banking and Trust Company, Philadelphia;
 - x. First National Bank, Dallas;
 - xi. Harris Trust and Savings Bank, Chicago;
 - xii. Republic National Bank, Dallas.
2. Selected from second 25 largest banks:
 - i. Seattle-First National Bank;
 - ii. Cleveland Trust Company;
 - iii. Philadelphia National Bank;
 - iv. Northern Trust Company, Chicago;
 - v. Girard Trust Bank, Philadelphia;
 - vi. Wachovia Bank and Trust Company NA, Winston-Salem, North Carolina;
 - vii. National Bank of North America, New York;
 - viii. Valley National Bank, Phoenix, Arizona;
 - ix. Manufactures National Bank, Detroit;
 - x. Detroit Bank and Trust Company;
 - xi. First National Bank of Oregon, Portland;
 - xii. Fidelity Bank, Philadelphia;
 - xiii. Pittsburgh National Bank;
 - xiv. United States National Bank of Oregon, Portland;
 - xv. First City National Bank, Houston, Texas;
 - xvi. The Bank of New York;
 - xvii. Marine Midland Bank-Western, Buffalo, New York;
 - xviii. Texas Commerce Bank NA, Houston;
 - xix. National City Bank, Cleveland;
 - xx. Hartford National Bank and Trust Company, Connecticut.]

17:16-39.6 Legal papers

Prior to any commitment to purchase obligations of the type described in this subchapter, it shall have been ascertained that the security under consideration is included on a list of banks which has been certified by the Director and a member of his staff as having met the requirements of this regulation.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

**Sales and Use Tax
Household Soaps and Disposable Household
Paper Products: Exemption from Sales and
Use Tax**

Proposed New Rule: N.J.A.C. 18:24-29

Authorized By: John R. Baldwin, Acting Director, Division of Taxation.
Authority: N.J.S.A. 54:32B-24 and P.L. 1982, c.227.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Jack Silverstein
Chief Tax Counselor
Division of Taxation
West State and Willow Streets
Trenton, NJ 08646

The Division of Taxation thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-229.

The agency proposal follows:

Summary

The proposed rules will clarify the application of statutory exemptions from sales and use tax as they apply to sales of soap, detergents and cleaning agents for household use and disposable household paper products on and after July 1, 1983. These exemptions from tax were authorized under the provisions of P.L. 1982, c.227.

Social Impact

The proposed rules will inform New Jersey retailers and consumers of the conditions for exemption for sales and use tax purposes and give specific examples of the kinds of products included in the provisions of the exemption sections.

Economic Impact

The proposed rules will implement the sales and use tax exemptions for the sale and use of household soap, detergents and cleaning agents and disposable household paper products. It is estimated that these exemptions from sales and use tax will decrease State revenue by \$40 million per annum.

Full text of the proposed new rule follows.

SUBCHAPTER 29. HOUSEHOLD SOAPS AND DISPOSABLE HOUSEHOLD PAPER PRODUCTS; EXEMPTION FROM SALES AND USE TAX

(a)

DIVISION OF TAXATION

Transfer Inheritance Tax Distribution by Agreement

Proposed Amendment: N.J.A.C. 18:26-2.11

Authorized By: John R. Baldwin, Acting Director, Division of Taxation.
 Authority: N.J.S.A. 54:50-1.

18:24-29.1 Scope of subchapter

This subchapter is intended to clarify the application of the Sales and Use Tax Act (N.J.S.A. 54:32B-1, et seq.) to the purchase and use of household cleaning agents, soaps, detergents and disposable household paper products.

18:24-29.2 Definitions

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

"Detergents" means synthetic water-soluble or liquid organic surface-active agents for use in washing or cleaning and that resemble soaps in the ability to emulsify oils and hold dirt in suspension.

"Disposable" means an item of tangible personal property which is designed to be thrown away after use.

"Household cleaners or cleaning agents" mean all organic or synthetic surface-active preparations sold for the purpose of removing dirt or any foreign or offensive matter from the surface of property by washing.

"Household use" means of or pertaining to the house or family.

"Paper products" mean items of tangible personal property made or substantially derived from paper.

"Soap products" mean items of tangible personal property made of or derived from soap which are intended for use in washing or cleaning the person or property.

18:24-29.3 Household cleaning agents, soaps and detergents

Effective July 1, 1983, the sale of household soap or soap products, detergents, household cleaners or cleaning agents purchased for household use is exempt from sales and use tax.

Example 1: The sale of bleaches, cleansers, laundry detergents, hand cleaners, oven cleaners, pre-soaks, hand soaps, spot removers, whiteners, glass cleaners, soap pads and tile cleaners is exempt from sales and use tax.

18:24-29.4 Household paper products

Effective July 1, 1983, the sale of disposable paper products, such as paper towels, paper napkins, toilet tissue, facial tissue, diapers, paper plates and cups, purchased for household use is exempt from sales and use tax.

Example 1: The sale of paper place mats, paper bags, wax paper, paper freezer wrap, paper tablecloths and paper straws is exempt from sales and use tax.

18:24-29.5 Business use

The exemption from sales and use tax provided by this subchapter does not apply to the sale or any use of detergents, cleaning agents and soaps and disposable paper products for industrial, commercial or other business purposes or for the use of any person consuming them in a capacity related to such purposes.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

William R. Mulholland,
 Superintendent
 Inheritance Tax Bureau
 Division of Taxation
 West State and Willow Streets
 Trenton, NJ 08646

The Division of Taxation thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-224.

The agency proposal follows:

Summary

The Director of the Division of Taxation, pursuant to the rulemaking power of N.J.S.A. 54:50-1, in this proposal seeks to amend N.J.A.C. 18:26-2.11 by eliminating subsection (b). On February 28, 1980, P.L. 1979, Chapters 484 and 492 were enacted which effectively permitted disclaimers by all beneficiaries of an estate regardless of the manner in which their interest was obtained. All properly executed and filed disclaimers or renunciations are now valid. Subsection (b) of N.J.A.C. 18:26-2.11 was not intended to apply to these disclaimers but has been so interpreted or misinterpreted by some attorneys and their clients, and in order to avoid confusion we deem this proposal advisable by eliminating this subsection.

Social Impact

The whole purpose of this proposal is to eliminate confusion when a beneficiary of an estate files a disclaimer or renunciation of a bequest or devise. The elimination of subsection (b) of the rule will lead to less confusion on the part of beneficiaries, the executor(s) and their attorneys.

Economic Impact

Eliminating confusion in interpretation of the statutes and rules is economically beneficial to the Division of Taxation and to the public both, in monetary savings resulting from less telephone conversations and correspondence. The Division is unable to put a dollar cost effect on the amendment to this, but it is necessary and does economically benefit the State, the public, taxpayers and their counsel.

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

18:26-2.11 Distribution by agreement

[(a)] If a transferee under a will agrees that the estate, or any part of it, is to be distributed otherwise than as provided in the will, the tax is nevertheless computed in accordance with the terms of the will admitted to probate.

[(b) If an heir waives or renounces his interest in the estate, or enters into an agreement that the property to which he is entitled is to be distributed otherwise than in accordance with the laws of succession, the tax is nevertheless computed as if he had not so waived or renounced.]

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Financial Disclosure Statements of Candidates for the Office of Governor and Candidates for the Senate or General Assembly

Proposed New Rule: N.J.A.C. 19:25-19

Authorized By: Election Law Enforcement Commission at its Public Meeting of February 2, 1983, and amended at its Public Meeting of April 11, 1983, Scott A. Weiner, Executive Director.

Authority: N.J.S.A. 19:44B-1 et seq., specifically N.J.S.A. 19:44B-7.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before June 15, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Gregory E. Nagy, Esq.
Staff Counsel
Election Law Enforcement
Commission
National State Bank Building
Suite 1114
28 West State Street
Trenton, NJ 08608

The Election Law Enforcement Commission thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the New Jersey Register of a notice of adoption.

This proposal is known as PRN 1983-230.

The agency proposal follows:

Summary

The proposed new rules for Personal Financial Disclosure Statements of Candidates for the Office of Governor and Candidates for the Senate or General Assembly are intended to implement P.L. 1981, c.129 (N.J.S.A. 19:44B-1 et seq.) by clarifying what financial information candidates must disclose.

This proposal supersedes rules previously proposed as PRN 1983-99, published March 7, 1983 at 15 N.J.R. 326(a). A public hearing was conducted on March 23, 1983. As a result of comments received at the hearing, the Commission adopted on April 11, 1983 changes to the texts of proposed N.J.A.C. 19:25-19.3 and 19:25-19.4. The amended texts of those proposed rules are hereby republished pursuant to N.J.A.C. 1:30-3.5. Proposed N.J.A.C. 19:25-19.1, 19.2 and 19.5 remain unchanged, but are republished for convenience of the reader. No further public hearing on the proposed rules is contemplated.

As originally published, N.J.A.C. 19:25-19.3 required reporting candidates to identify the source of earned income received by the

candidate or member of the candidate's household only if during the calendar year the source exceeded \$1,000 in one of the categories of earned income. The categories of earned income provided by the statute are: salaries, bonuses, royalties, fees, commissions and profit sharing (N.J.S.A. 19:44B-4(a)). Therefore, a source would not be disclosed if it provided a candidate with an aggregate amount exceeding \$1,000 unless that threshold was exceeded in a single category of earned income. For example, a source providing a candidate \$600.00 in salary and \$500.00 in royalties would not be disclosed because in neither category did the source exceed \$1,000. An identical requirement was proposed in N.J.A.C. 19:25-19.4 for categories of unearned income, which are: rents, dividends and other income received from named investments, trusts and estates (N.J.S.A. 19:44B-4(b)).

At the public hearing conducted on March 23, 1983 a representative of New Jersey Common Cause suggested two changes to the proposed rules published at 15 N.J.R. 326(a):

1. Requiring the disclosure of all sources of earned and unearned income whenever the category exceeds \$1,000; and
2. Requiring the disclosure of a source when the combined categories total more than \$1,000.

The Commission, at its public meeting of April 11, 1983, enacted amendments to the texts of proposed N.J.A.C. 19:25-19.3 and 19.4 incorporating the first suggestion, but not the second. The Commission found that the statutory language of N.J.S.A. 19:44B-4(a) and (b) supports a reading that all sources of income must be disclosed when the total amount received in a category from all sources exceeds \$1,000. Such an interpretation promotes the high public interest in disclosure of candidates' sources of income that the statute is intended to achieve. However, the Commission concluded that it would be overly burdensome in comparison to the disclosure obtained to require reporting of any source of \$100.00 or less. The second suggestion was rejected by the Commission as contrary to the statutory language of N.J.S.A. 19:44B-4. The Commission believes that the recital of categories within earned income and unearned income, as well as categories for other kinds of income with different threshold amounts as provided in N.J.S.A. 19:44B-4(c), (d), (e) and (f) precludes an interpretation that any source exceeding \$1,000, regardless of category, must be disclosed.

Social Impact

The proposed rules promote the public interest in achieving disclosure of certain financial information from candidates for State public elective office required by P. L. 1981, c.129, and provide guidance to candidates in meeting their obligations to prepare and file Personal Financial Disclosure Statements with the Commission.

Economic Impact

The proposed rules do not result in any additional cost to the Commission, or to candidates, because they merely clarify reporting requirements under the Personal Financial Disclosure Act (P.L. 1981, c.129). The proposed rules do not create any new or additional filing requirements. By providing guidance as to the substantive reporting requirements the Commission anticipates that the costs to candidates, if any, of preparing Personal Financial Disclosure Statements may be reduced.

Full text of the proposed new rule follows.

SUBCHAPTER 19. PERSONAL FINANCIAL DISCLOSURE STATEMENTS

19:25-19.1 Authority

The provisions of this subchapter, covering personal financial disclosure statements of candidates for the Office of Governor or for State legislative office are promulgated pursuant to the Act requiring the filing of financial disclosure statements by certain

candidates, Laws 1981, c.129 (N.J.S.A. 19:44B-1, and following-the Personal Financial Disclosure Statement Act).

19:25-19.2 Definitions

The following words and terms when used in this subchapter shall have the following meanings unless a different meaning clearly appears from the context.

"Gift" means any money or thing of value received other than as income, and for which a consideration of equal or greater value is not received, but does not include any political contribution reported as otherwise required by law, any loan made in the ordinary course of business, or any devise, bequest, intestate estate distribution or principal distribution of a trust or gift received from a member of a person(s) household or from a relative within the third degree of consanguinity of the person or his spouse, or from the spouse of that relative.

"Income" means any money or thing of value received, or to be received, as a claim on future services, whether in the form of a fee, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense, or any combination thereof.

"Member of household" means the spouse of a candidate for the Office of Governor or of a candidate for the Senate or General Assembly residing in the same domicile and any dependent children.

"Relative" shall mean a son, daughter, grandson, granddaughter, father, mother, grandfather, grandmother, greatgrandfather, great-grandmother, brother, sister, nephew, niece, uncle, or aunt. Relatives by adoption, half-blood, marriage, or re-marriage shall be treated as relatives of the whole kinship.

19:25-19.3 Reporting of earned income

(a) The Personal Financial Disclosure Statement shall include the name and address of the corporation, professional association, partnership or sole proprietorship which is the source of each of the following categories of earned income totalling more than \$1,000 for the preceding calendar year: salaries, bonuses, royalties, fees, commissions and profit sharing.

(b) Each source within any category which exceeds \$1,000 must be identified by name, except that identification of name and address shall not be required as to any source which totals \$100.00 or less for the year; an indication whether the total receipts from all sources within the categories exceeds \$1,000 shall be included in the statement.

Example: Candidate A receives commissions each year in the amount of \$990.00 from BCD Corporation, and also receives commissions each year in the amount of \$50.00 from EFG Corporation. The Personal Financial Disclosure Statement filed by Candidate A must include the name and address of BCD Corporation but not of EFG Corporation, as a source; the statement will also indicate receipts in excess of \$1,000 in commissions.

(c) Income received from a public body, other than from the State of New Jersey, must be included under the category of Earned Income.

19:25-19.4 Reporting of unearned income

(a) The statement shall include the name and address of the corporation, professional association, partnership or sole proprietorship which is the source of each of the following categories of unearned income totalling more than \$1,000 for the preceding calendar year: rents, dividends and other income received from named investments, trusts and estates; except that no address need be provided with respect to a source of dividends if the source of dividends is a listed security.

(b) Each source within any category which exceeds \$1,000 must be identified by name, except that identification of name and address shall not be required as to any source which totals \$100.00

or less for the year; an indication whether the total receipts from all sources within the category exceeds \$1,000 shall be included in the statement.

Example: Candidate A receives dividends each year in the amount of \$990.00 from BCD Corporation, and also receives dividends each year in the amount of \$50.00 from EFG Corporation. The Personal Financial Disclosure Statement filed by Candidate A must include the name and address of BCD Corporation but not of EFG Corporation as a source; the statement will also indicate receipts in excess of \$1,000 in dividends.

(c) Where such rents, dividends or other income are received by joint owners, one of whom is the candidate, the interest of the candidate shall be reportable if the proportionate share of such rents, dividends or other income exceeds \$1,000.

(d) In calculating whether rental income exceeds \$1,000, the rental used shall be gross rental, without deduction of any of the expenses of operating or maintaining the rented property.

19:25-19.5 Advisory opinions

The Commission may issue advisory opinions as to the applicability of the Personal Financial Disclosure Act and this subchapter to a given set of facts and circumstances.

Recodification of existing text follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

SUBCHAPTER [19.] 20. SEVERABILITY CLAUSE

[19:25-19.1] **19:25-20.1** Severability clause
(No change in text.)

RULE ADOPTIONS

CIVIL SERVICE

(a)

CIVIL SERVICE COMMISSION

Hours of Work

Criteria for Setting Work Week

Adopted New Rules: N.J.A.C. 4:1-7.11, 18.6 through 18.8

Adopted Amendment: N.J.A.C. 4:1-18.2

Adopted Repeal: N.J.A.C. 4:2-7.1

Proposed: September 7, 1982 at 14 N.J.R. 938(a).
Adopted: March 15, 1983 by Civil Service Commission,
Eugene J. McCaffrey, Sr., President.
Filed: April 29, 1983 as R.1983 d.159, **without change**.

Authority: N.J.S.A. 11:5-1, 11:14-1.

Effective Date: May 16, 1983.

Expiration Date pursuant to Executive Order No. 66(1978):
December 7, 1986.

Summary of Public Comments and Agency Responses:

A written comment was received from CWA Representative Robert W. Pursell noting that N.J.A.C. 4:1-7.11 and N.J.A.C. 4:1-18.6 through 18.8 essentially maintain the status quo. He asserts that the NL or NL4 workweek designation assigned to many CWA bargaining unit titles is inappropriate since there are means of certifying when workers in these titles perform work beyond a "normal" workweek. Thus, his concern is not with the substance of the rules, but their application. Transfer of the rules concerning fixed and NL workweeks from the Overtime Committee rules to Civil Service Commission rules clarifies the avenues to pursue in appealing allegedly inappropriate workweek designations.

(b)

CIVIL SERVICE

Overtime Committee Rules

Adopted New Rules: N.J.A.C. 4:6

Adopted Repeal: N.J.A.C. 4:6

Proposed: October 18, 1982 at 14 N.J.R. 1126(a).
Adopted: April 21, 1983 by the Overtime Committee
(President of the Civil Service Commission, State
Treasurer and Director of the Division of Budget and
Accounting).
Filed: April 29, 1983 as R.1983 d.158, **with changes** not
in violation of N.J.A.C. 1:30-3.5.

Authority: N.J.S.A. 52:14-17.13 and -17.14.

Effective Date: May 16, 1983.

Expiration Date pursuant to Executive Order No. 66(1978):
May 16, 1988.

Summary of Public Comments and Agency Responses:

Written comments concerning the proposed Overtime Committee Rules, N.J.A.C. 4:6 were received from the Departments of Health, Human Services, Law and Public Safety, and Transportation; the State Personnel Council; several representatives of the Communications Workers of America (CWA); and an individual State employee.

Specific comments which were accepted and are reflected in the changes upon adoption include:

(1) To avoid any misunderstanding, the statutory authority to department heads to compensate employees by either cash payment or compensatory time off has been noted in N.J.A.C. 4:6-3.1;

(2) The Departments of Human Services, Law and Public Safety and Transportation and the State Personnel Council expressed concerns that the adoption of N.J.A.C. 4:6-4.3 might infringe upon management's ability to effectuate reductions in expenditures. This matter will be further reviewed and the provision will not be adopted at this time;

(3) The State Personnel Council suggested that the reference to sick, vacation and administrative leave in N.J.A.C. 4:6-6.4(a)3 be deleted since this is not within the purview of the Overtime Committee. The provision has been rephrased to clarify its intent;

(4) As the result of comments from the Department of Law and Public Safety and the CWA, the definition of casual employees in N.J.A.C. 4:6-2.1 has been adjusted to reflect appropriate responsibilities of the Overtime Committee;

(5) The CWA noted that the proposed rules referred to normal and regular workweeks and suggested that terminology be made consistent. The term "regular workweek" has now been used throughout the rules.

Minor revisions have been made to N.J.A.C. 4:6-6.4(a)1, 4:6-6.4(a)2 and 4:6-7.1(b) to correct publication errors in the September, 1982 edition of the New Jersey Register.

Other comments include:

1. The CWA asked that the rules in general and several provisions in particular, such as holiday compensation for non-limited (NL) employees and training and travel provisions, be subject to collective negotiation. However, pursuant to N.J.S.A. 52:14-17.14 the Overtime Committee is delegated responsibility in these areas. Several comments made by the CWA could not be utilized because of apparent statutory preemption and policy concerns. These included a change in the composition of the Overtime Committee, basing overtime compensation on a work day rather than a workweek, creation of budgeted positions for casual employees, extension of eligibility for overtime compensation to casual and non-limited (NL) employees, to part-time employees working beyond their normal workweek and to certain on call situations and increasing holiday pay to two and one-half times the regular rate of pay. The CWA also suggested that provisions concerning exceptional circumstances, such as special project rates and overlap security time, appeared to pertain to positions predominantly encumbered by males. In this regard, the nature of the work was the sole factor considered by the Overtime Committee.

2. The Department of Law and Public Safety expressed concern with the reporting requirements in exceptional emergencies. The requirements are not overly stringent in view of the limited number of such emergencies in the past and the exceptional practices

allowed in such situations. This Department and the Department of Health were concerned with formulas for accrual of compensable time by non-limited (NL) employees. Given the agency discretion in these matters, such suggestions may be reviewed administratively.

3. The Department of Transportation raised the potential for abuse in regard to compensation for training circumstances. State departments should be able to minimize any abuse in view of the appointing authority review of these situations.

4. An individual State employee requested that persons in seven day coverage operations be granted cash compensation for holiday work. N.J.S.A. 52:14-17.13 provides that the appointing authority may allow cash payment or compensatory time off; thus, cash compensation is not mandated by the statute.

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

SUBCHAPTER 2. DEFINITIONS

4:6-2.1 Words and phrases defined

“Casual employee” means an employee appointed pursuant to a personnel action request for special projects, peak workloads or other operational necessities where the work period is intermittent, irregular or of short duration *[not exceeding six months within a one year period of initial date of appointment]*.

“Overtime compensation” means cash compensation at a rate representing 1 1/2 times the employee’s hourly rate of base salary or compensatory time off at the rate of 1 1/2 hours for each hour worked beyond the *[normal]* *regular* workweek.

SUBCHAPTER 3. ELIGIBILITY

4:6-3.1 Fixed workweek titles

Employees in fixed workweek titles shall be eligible for overtime compensation for time worked in excess of the *[normal]* *regular* workweek. ***Compensation shall either be cash payment or compensatory time off at the discretion of the department head with the approval of the Overtime Committee.***

4:6-3.4 Part-time employees

Part-time employees shall be eligible for overtime compensation only when they work beyond the *[normal]* *regular* workweek established for full-time employees in their titles.

SUBCHAPTER 4. CONDITIONS FOR AWARDING OVERTIME COMPENSATION

4:6-4.1 Compensable overtime

(a) An employee shall only be eligible for overtime compensation when:

1. S/he is in pay status for the full number of hours in his/her *[normal]* *regular* workweek; and
2. S/he works at least one hour beyond the *[normal]* *regular* workweek.

(b) Once an employee is eligible for overtime compensation in a workweek, additional overtime in that workweek shall be credited in units of one-half hour.

(c) Work credited toward overtime compensation must represent one-half hour units of continuous work beyond a *[normal]* *regular* work day.

4:6-4.3 *[Reduction of compensable overtime]* ***(Reserved)***
[An appointing authority shall not require an employee to take time off without pay during a workweek to reduce the number of hours of compensable overtime for that week.]

SUBCHAPTER 5. SPECIAL CIRCUMSTANCES

4:6-5.1 On call situations

Employees in fixed workweek titles who are required either to live on or be near the premises of their work station or to be on call for emergency situations beyond their *[usual]* *regular* work hours shall be eligible for overtime compensation only for the time spent in the actual performance of work duties.

4:6-5.2 Training

(a) Employees shall not be eligible for overtime compensation for time spent beyond their *[normal]* *regular* work hours while in training. However, if employees in fixed workweek titles are mandated by an appointing authority to attend training programs and actual formal training and/or related travel extends beyond the *[normal]* *regular* work hours, the appointing authority may, at its discretion, authorize compensation for the additional time to a maximum rate of hour for hour. The additional compensation may be in the form of cash or time off.

4:6-5.3 Travel

(a) Employees shall be eligible for overtime compensation for travel beyond the *[normal]* *regular* work hours when it is related to assignments for which overtime compensation is authorized and the assignments are contiguous to the *[normal]* *regular* work day. *[Normal]* *Regular* commutation time shall not be included.

(b) Employees shall not be eligible for overtime compensation for travel to or from work assignments performed during *[normal]* *regular* work hours. An appointing authority, after deducting *[normal]* *regular* commutation time, may authorize compensation for the additional time spent in travel by employees in fixed workweek titles to a maximum rate of hour for hour. The additional compensation may be in the form of cash or time off.

4:6-5.5 Exceptional emergencies

(a)–(b) (No change from proposal.)

(c) These provisions shall not apply to work performed beyond the *[normal]* *regular* work hours on emergency maintenance, construction, snow removal or other related work in situations which constitute unreasonable safety hazards to the public, employees, other persons or property of the State. The Civil Service Commission shall establish special project rates for these circumstances.

SUBCHAPTER 6. HOLIDAY PAY

4:6-6.4 Seven day coverage positions

(a) The following shall govern overtime compensation for full-time and part-time employees in fixed workweek titles who are employed in a seven day coverage operation:

1. If a holiday occurs on a regular *[day]* *workday* of an employee and s/he works, the employee is entitled to overtime compensation for all work performed on the holiday in addition to the regular rate of compensation.

2. If a holiday occurs on a regular day *off* an employee, s/he shall be given an additional day off in the same workweek. If, as the result of an emergency, the employee is required to work on the additional day, s/he shall be entitled to overtime compensation for all work performed on the additional day.

3. If a holiday occurs on a regular workday of an employee and the employee does not report for duty, s/he *[is only entitled to receive regular base pay, if otherwise eligible, for a sick, vacation or administrative leave day.]* ***shall not be eligible for overtime compensation or an alternate day off.***

SUBCHAPTER 7. APPOINTING AUTHORITY RESPONSIBILITIES

4:6-7.1 Development of regulations
 (a) (No change from proposal.)
 (b) A copy of each *[departments]* ***department's*** procedures and written interpretations and any subsequent changes are to be filed with the Overtime Committee (c/o President, Civil Service Commission) and approved prior to promulgation.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING

**Hotels and Multiple Dwellings
 Exclusion of Certain Row Houses from
 Jurisdiction**

Adopted Amendment: N.J.A.C. 5:10-1.4

Proposed: March 21, 1983, at 15 N.J.R. 375(a).
 Adopted: April 27, 1983 by John P. Renna, Commissioner,
 Department of Community Affairs.
 Filed: April 29, 1983 as R.1983 d.156, **without change.**

Authority: N.J.S.A. 55:13A-3(k), -6(e), P.L. 1983, c.2.

Effective Date: May 16, 1983.
 Expiration Date pursuant to Executive Order No. 66(1978):
 January 1, 1984.

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

(b)

DIVISION OF HOUSING

**Public Housing and Development Authority
 Limited Dividend and Nonprofit Housing
 Corporations and Associations**

**Adopted Amendments: N.J.A.C. 5:13-1.1,
 1.5, 1.19, 1.20, 1.25, 1.27
 Adopted Repeal: N.J.A.C. 5:13-1.3, 1.21,
 1.22, 1.23, 1.24, 1.26**

Proposed: February 22, 1983 at 15 N.J.R. 193(a).
 Adopted: April 19, 1983 by John P. Renna, Commissioner,
 Department of Community Affairs.
 Filed: April 26, 1983 as R.1983 d.145, **with substantive
 changes** not requiring additional public notice and
 comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 55:16-11 and 52:27D-22; P.L. 1981,
 c.462.

Effective Date: May 16, 1983.

Expiration Date pursuant to Executive Order No. 66(1978):
 January 1, 1988.

Summary of Public Comments and Agency Responses:

A comment was received from a nonprofit housing sponsor expressing concern over imposition of undue burdens upon persons transferring shares in cooperatives as part of the transfer of their units if such transfers had to be approved in advance by the Public Housing and Development Authority. The Department replied by pointing out that transfers between individuals are not covered by N.J.A.C. 5:13-1.5. The Department decided, however, that it would be desirable to change the amendment to make it clear that transfers by or to individuals of shares held in conjunction with a lease to a unit in a cooperative project are not required to be approved in advance by the P.H.D.A.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***).

5:13-1.5 Operation of corporation or association

(a) The following acts of the housing sponsor, to be valid and effective, shall be subject to the prior approval of the Authority in writing:

1.-4. (No change from proposal.)

5. Sale, transfer, encumbrance or assignment of the property of the housing sponsor or of any stock or other ownership interest in the housing sponsor*, provided, however, that this paragraph shall not apply to transfers by or to individuals of stock in a nonprofit corporation which is held, or is to be held, in conjunction with a lease to a dwelling unit in a cooperative project which is occupied or is to be occupied by the holder of the stock*.

(c)

DIVISION OF HOUSING

Uniform Construction Code

Readoption: N.J.A.C. 5:23

Proposed: November 15, 1982 at 14 N.J.R. 1247(a).
 Adopted: April 19, 1983 by John P. Renna, Commissioner,
 Department of Community Affairs.
 Filed: April 26, 1983 as R.1983 d.144, **without change.**

Authority: N.J.S.A. 52:27D-124, 52:27D-124 f. and
 54:4-3.116.

Effective Date: April 26, 1983.
 Expiration Date pursuant to Executive Order No. 66(1978):
 April 1, 1988.

Summary of Public Comments and Agency Responses:

Pursuant to the requirements of Executive Order No. 66(1978) concerning rule "sunset", the Department of Community Affairs has readopted N.J.A.C. 5:23, the State Uniform Construction Code regulations. This readoption did not effect any changes in the existing text. The chapter is necessary in order to implement P.L. 1975, c.217 (N.J.S.A. 52:27D-124), the State Uniform Construction Code Act, as amended and supplemented.

The readopted chapter contains regulations concerning enforcement procedures, subcodes, rules for enforcing agencies, licensing of enforcement officials and tax exemption for solar

energy facilities. Technical standards are not set forth in the chapter; rather, they are contained in the subcodes which are adopted model codes of recognized code-writing organizations. The adopted subcodes are the current editions of the BOCA Basic Building Code, the National Electrical Code, the National Standard Plumbing Code, the BOCA Basic Energy Conservation Code and the Federal Manufactured Home Construction and Safety Standards. The technical standards contained in these subcodes may not be modified by the Department or by any local code enforcement agency.

The State Uniform Construction Code Act was adopted in order to eliminate the multiplicity of local regulations that imposed undue burdens upon construction in New Jersey. Now a builder can build in any municipality in the knowledge that the applicable technical and administrative construction standards are the same as those in effect elsewhere in the State and that technical standards are based upon the consensus of technical experts from many states, based upon current scientific data.

Since its initial adoption in 1978, N.J.A.C. 5:23 has been subject to constant examination and frequent and continuing revision. The most recent Index of Adopted Rules in the New Jersey Register shows 45 rule changes since March 19, 1981 alone. The State Uniform Construction Code has a direct impact on all construction contractors, all purchasers, owners and occupants of new and renovated construction and all those on the State and local levels, and in private enforcing agencies, who are involved in code enforcement. The Department is committed to a policy of continuing reexamination and, where necessary, revision.

The State Uniform Construction Code, of which the readopted chapter is an integral part, has established uniform administrative and technical standards that provide owners and occupants of newly-constructed or renovated buildings with assurance that the person doing the construction has had to comply with sound, modern construction standards which have been designed to promote building safety.

The elimination of unnecessary local construction requirements has made construction less expensive than it would otherwise be. Builders who build in many municipalities no longer have to alter building plans to meet these local requirements and they can order the same materials for use in all of their jobs since materials acceptable under the Code must be accepted everywhere.

A comment was received from a plumbing contractor concerned about requirements for licensing of plumbers, municipal permit fees and the role of plumbing inspectors in the code-writing process. In reply, the Department advised that it does not have jurisdiction in the area of trade licensing and that it does not have authority to roll back excessive municipal permit fees (although there is legislation pending that would give the Department this power). The Department also advised that the model codes, including the National Standard Plumbing Code, have, in the judgment of the Department, served the State well that Code is issued by the National Association of Plumbing, Heating, Cooling Contractors and that the writer of the comment, like all other interested parties, is invited to submit recommendations for State-sponsored code change proposals.

(a)

DIVISION OF HOUSING

Rooming and Boarding Houses Rights of Limited Tenure Residents

Adopted New Rule: N.J.A.C. 5:27-3.12

Proposed: March 21, 1983 at 15 N.J.R. 375(b).

Adopted: April 27, 1983 by John P. Renna, Commissioner, Department of Community Affairs.
Filed: April 29, 1983 as R.1983 d.157, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 55:13B-4, -6.

Effective Date: May 16, 1983.

Expiration Date pursuant to Executive Order No. 66(1978): July 1, 1985.

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

OFFICE OF ADMINISTRATIVE LAW NOTE: The new rule was originally proposed as subsection (b) of N.J.A.C. 5:27-3.1. After internal review, the Department determined that the applicability of the rule to the entire subchapter would be clearer if it were made a new section instead. The new rule is cited N.J.A.C. 5:27-3.12, while 5:27-3.1 remains unchanged. The reference to P.L. 1979,c.500 (the "Boarding House Bill of Rights") was included to make it clear that only rights established solely by regulation are meant to be limited by this rule.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks *thus*).

5:27-3.12 Limited tenure hotel guests

In the event that a hotel, motel or established guest house is classified as a rooming or boarding house for purposes of the Act by reason of having fewer than 85 percent of the dwelling units offered for limited tenure only, a resident occupying a unit on a limited tenure basis shall have the legal rights of a hotel guest ***and the rights set forth in section 3 of P.L. 1979, c.500 (N.J.S.A. 55:13B-19)*** but shall not have any of the additional rights of residents established by this subchapter.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF FISH GAME AND WILDLIFE

Shellfisheries Oyster Seed Beds

Adopted Amendment: N.J.A.C. 7:25A-3.1

Proposed: February 22, 1983, at 15 N.J.R. 200(a).

Adopted: April 21, 1983 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Filed: May 2, 1983 as R.1983 d.161, **without change**.

Authority: N.J.S.A. 50:1-5 and 50:3-8.

Effective Date: May 16, 1983.

Expiration Date pursuant to Executive Order No. 66(1978): March 13, 1984.

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

(a)**BOARD OF HIGHER EDUCATION****County Colleges
General Education Requirements****Adopted Amendment: N.J.A.C. 9:4-1.6**

Proposed: February 22, 1983 at 15 N.J.R. 203(a).
Adopted: April 20, 1983 by the Board of Higher Education,
T. Edward Hollander, Chancellor and Secretary.
Filed: April 26, 1983 as R.1983 d.147, **without change**.

Authority: N.J.S.A. 18A:3-14(e) and 18A:64A-7(b)(4).

Effective Date: May 16, 1983.
Operative Date: September 1, 1984.
Expiration Date pursuant to Executive Order No. 66(1978):
November 2, 1986.

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

(b)**BOARD OF HIGHER EDUCATION****County Colleges
Reduction in Force Rules****Adopted New Rule: N.J.A.C. 9:4-5**

Proposed: February 7, 1983 at 15 N.J.R. 128(a).
Adopted: April 18, 1983 by Board of Higher Education,
T. Edward Hollander, Chancellor and Secretary.
Filed: April 26, 1983 as R.1983 d.146, **with substantive
and technical changes** not requiring additional public
notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 18A:3-14(h) and 18A:64A-7.

Effective Date: May 16, 1983.
Expiration Date pursuant to Executive Order No. 66(1978):
November 2, 1986.

Summary of Public Comments and Agency Responses:

The Department received over 50 letters commenting on the proposed rules. Most of the letters objected to the enactment of the rules, without specific criticism of any particular rule, on the grounds that the rules violated the tenure law. The Department's response indicated that similar rules for the State colleges have been considered by the State Supreme Court and found not to violate the tenure law.

Specific criticisms were as follows:

Comment: 9:4-5.2 should be amended to include a definition of "fiscal exigency".

Response: No adequate definition of the term fiscal exigency exists; such an exigency must be determined on the basis of the attendant factual circumstances.

Comment: 9:4-5.4 should be amended to provide access to the information relied upon to support a reduction in force and to permit

the submission of alternative plans by the college community; a suggestion was also made to require public hearings on the plans.

Response: The agency amended the rule to reflect the first two comments; public hearings would not assist the process and the suggestion is rejected.

Comment: 9:4-5.5 should be amended to provide that no affirmative action consideration should supercede seniority rights.

Response: The agency believes the regulation adequately addresses the States' commitment to affirmative action and rejects the amendment.

Comment: 9:4-5.6 should be amended to provide that faculty be permitted to teach a partial course load if a full load is not available; that adjuncts and regular faculty teaching overloads should not be permitted to supplant full time faculty; and finally that faculty to be laid off in one discipline be considered for positions in another discipline.

Response: The agency amended the rule to accept the first two suggestions, and accepted the third suggestion provided a vacancy exists.

Comment: 9:4-5.7 an amendment was suggested to establish a specific period of notice of layoff.

Response: The agency will re-notice an amended rule with specific notice periods.

Comment: 9:4-5.8 should be amended to include recognition of seniority rights as a criteria for reemployment.

Response: The rule was amended to provide for additional review of faculty qualifications by the Board of Trustees; no further recognition of seniority rights was deemed appropriate.

Comment: 9:4-5.8 should be amended to allow laid off employees a grace period to complete other contractual obligations when they are recalled.

Response: A one year grace period has been added to the regulation.

Comment: 9:4-5.9 should be amended to delete the five year period after which laid off faculty would be removed from the reemployment list.

Response: The agency rejected this suggestion as in its judgment five years is a reasonable time limitation.

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

9:4-5.4 Consultation with college community

The president shall consult with the college community in developing the plan and recommendations to be presented to the board of trustees. **Representatives of the college community shall upon request, be provided with class enrollment data, and financial data in a timely manner pursuant to the Right to Know Law (N.J.S.A 47:1A-1). Nothing herein shall require a college to prepare such information in a format not routinely utilized by the college. Representatives of the college community may present alternative plans to modify or avoid the reduction in force to the college president, provided that such plans are submitted within the time permitted the president to submit a plan to the trustees. The president shall forward any suggested alternative plans to the Board of Trustees along with his own recommendations.**

9:4-5.6 Review of recommendations

(a) The board of trustees shall review the president's recommendations, which shall include the affirmative action officer's assesment of their impact, and may accept, reject, or modify such recommendations.

(b) If such recommendations as noted in (a) above include the layoff of employees, the board shall be guided by the following principals:

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

***6. Where a reduction in force is caused by a natural**

diminution in enrollment and a partial academic teaching load is available for which a laid off faculty member is qualified, then such a faculty member shall be given the first opportunity to teach such a partial load, at a salary proportionate to his or her full time compensation.

7. The use of adjuncts of full time faculty on overload to assume the equivalent of the full time academic load in the discipline of faculty who are to be laid off shall not be permitted. Nothing herein shall prevent a college from utilizing adjunct or overload faculty if no laid off faculty are qualified to teach the scheduled courses in the academic judgment of the president.

8. The qualifications of laid off faculty members shall be reviewed by the president of the college. If in the academic judgment of the president the faculty member is qualified to teach in another discipline, and a vacancy exists, or courses are being taught by an adjunct faculty member, or by another full time faculty member on an overload assignment, then the laid off faculty member shall be employed to fill the vacancy or to assume the courses taught by adjunct or on an overload.*

9:4-5.7 Notice requirements; time period

Upon the board determining the areas that may be affected by the layoff, it shall give notice to all individuals subject to the proposed layoff two weeks prior to the formal board action on said layoffs. After formal board action on said layoff, the board of trustees shall notify each employee who is to be laid off of such fact as soon as possible. *Appeals of layoffs due to fiscal exigency shall be given emergent consideration, if requested.*

9:4-5.8 Reemployment lists; generally

(a) With respect to reemployment rights of tenured faculty and multi-year contract employees, the college president shall establish separate reemployment lists for academic and administrative positions, including the names and qualifications of all tenured or multi-year contract employees on layoff status.

(b) The College shall not fill a vacancy in any faculty position in any layoff unit in which a layoff has occurred without first making a written offer of reemployment to those persons on the academic reemployment list whom the president believes, as a result of his academic judgment confirmed by the Board of Trustees, are qualified to fill the position.

(c) The college president shall not fill a vacancy in an administrative position in any layoff unit which layoff has occurred without first making a written offer of employment to the person on the administrative reemployment list whom the president in his administrative judgment confirmed by the Board of Trustees, believes most qualified.

(d) In the event that two or more persons on a academic reemployment list have accepted an offer of reemployment for a single faculty position, the college shall give reemployment preference in reverse of the order in which they were laid off; i.e. last laid off, first rehired. Where the president deems two or more persons on the administrative reemployment list to be equally qualified for an administrative position, the person with the longest employment within the layoff unit in which the vacancy exists shall be preferred.

(e) *(b)* A person offered reemployment shall have two weeks from receipt to respond to an offer, which shall be sent by certified mail, return receipt requested, after which the offer shall be deemed to have expired and the person to have waived any rights to reemployment under these regulations. Persons on a reemployment list shall have the obligation to keep the college president informed of current addresses.

(f) If a person offered reemployment cannot accept the reemployment offer immediately due to an ongoing professional contract with another employer, such person shall not be deemed to have waived any reemployment right, provided that he or she resumes employment with the college within one year of the date of notification of reemployment.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmacy Manual Pharmaceutical Assistance to the Aged and Disabled Program, and Institutional Pharmacy Permits

Readoption: N.J.A.C. 10:51-5 with amendments to 5.9 and 5.12
Expiration: N.J.A.C. 10:51-6

Proposed: February 22, 1983 at 15 N.J.R. 209(a).
Adopted: April 25, 1983 by George J. Albanese,
Commissioner, Department of Human Services.
Filed: April 26, 1983 as R.1983 d.155, **without change**.

Authority: N.J.S.A. 30:4D-22, 24.

Effective Date: April 26, 1983 for the readoption; May 16, 1983 for the amendments.
Expiration Date pursuant to Executive Order No. 66(1978): April 26, 1988.

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

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual

Readoption: N.J.A.C. 10:69A

Proposed: February 22, 1983, at 15 N.J.R. 211(a).
Adopted: April 25, 1983 by George J. Albanese,
Commissioner, Department of Human Services.
Filed: April 26, 1983 as R.1983 d.154, **without change**.

Authority: N.J.S.A. 30:4D-20, 24.

Effective Date: April 26, 1983.
Expiration Date pursuant to Executive Order No. 66(1978): April 26, 1988.

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

(a)**DIVISION OF PUBLIC WELFARE****General Assistance Manual
Determination of Unemployability****Adopted Amendment: N.J.A.C. 10:85-3.2(g)**

Proposed: March 7, 1983 at 15 N.J.R. 314(a).
 Adopted: April 28, 1983 by George J. Albanese,
 Commissioner, Department of Human Services.
 Filed: April 29, 1983 as R.1983 d.160, **without change**.

Authority: N.J.S.A. 44:8-111(d).

Effective Date: May 16, 1983.

Expiration Date pursuant to Executive Order No. 66(1978):
 June 1, 1983.

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

(b)**NEW JERSEY COMMISSION FOR THE
BLIND AND VISUALLY IMPAIRED****State Plan for Vocational Rehabilitation
Services
Federal Fiscal Years 1983, 1984 and 1985****Adopted Amendment: N.J.A.C. 10:98**

Proposed: November 1, 1982 at 14 N.J.R. 1193(a).
 Adopted: April 19, 1983 by George J. Albanese,
 Commissioner, Department of Human Services.
 Filed: April 26, 1983 as R.1983 d.149, **without change**.

Authority: N.J.S.A. 30:6-11, 30:6-15 and 30:6-15.2.

Effective Date: May 16, 1983.

Expiration Date pursuant to Executive Order No. 66(1978):
 July 12, 1987.

Summary of Public Comments and Agency Responses:

One letter was received from an organization of blind consumers. The respondent acknowledged the new plan, however, it was felt that very little planning went into the document due to the format in which it was presented. The respondent also felt that the basic weakness of the plan was its lack of attention to the quality of services in vocational rehabilitation offered by this agency. Another concern was about program and service delivery to the most severely handicapped; the most severely handicapped should be given priority for service programs.

In response to the above comments, it was pointed out that the plan is in a "preprinted format" and is required by RSA and approved by the Office of Management and Budget (2098-0132). This plan, as presented, is the Vocational Rehabilitation Plan and therefore does not cover all of the Agency's services; it covers only those with an acceptable Vocational Rehabilitation goal. By law, if there was a significant drop in Federal funding, only the "most" severely disabled would be accepted for services. At present, all eligible blind and visually impaired applicants are being accepted for services.

A brochure describing all of the agency services was sent to the respondent. All other reasonable attempts were made to clarify the current plan to the respondent.

There were no other comments received by this agency. The Plan is being adopted without change.

LAW AND PUBLIC SAFETY**(c)****BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS****Examination Fees****Adopted Amendment: N.J.A.C. 13:40-6.1**

Proposed: January 17, 1983 at 15 N.J.R. 78(b).
 Adopted: March 3, 1983 by New Jersey Board of
 Professional Engineers and Land Surveyors, Robert C.
 Kirkpatrick, Jr., President.
 Filed: April 26, 1983 as R.1983 d.148, **without change**.

Authority: N.J.S.A. 45:1-3.2.

Effective Date: May 16, 1983.

Expiration Date pursuant to Executive Order No. 66(1978):
 June 9, 1983.

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

TRANSPORTATION**(d)****TRANSPORTATION OPERATIONS****Restricted Parking and Stopping
Route 27****Adopted Amendment: N.J.A.C. 16:28A-1.18**

Proposed: March 7, 1983 at 15 N.J.R. 317(a).
 Adopted: April 18, 1983 by David W. Gwynn, Chief
 Engineer, Transportation Operations and Local Aid.
 Filed: April 26, 1983 as R.1983 d.150, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-138.1
 and 39:4-199.

Effective Date: May 16, 1983.

Expiration Date pursuant to Executive Order No. 66(1978):
 August 1, 1983.

Summary of Public Comments and Agency Responses:

No comments received.

Effective Date: May 16, 1983.
Expiration Date pursuant to Executive Order No. 66(1978):
August 1, 1983.

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

(a)

TRANSPORTATION OPERATIONS

**Restricted Parking and Stopping
Route 35**

Adopted Amendment: N.J.A.C. 16:28A-1.25

Proposed: March 7, 1983 at 15 N.J.R. 318(a).
Adopted: April 18, 1983 by David W. Gwynn, Chief
Engineer, Transportation Operations and Local Aid.
Filed: April 26, 1983 as R.1983 d.151, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and
39:4-139.

Effective Date: May 16, 1983.
Expiration Date pursuant to Executive Order No. 66(1978):
August 1, 1983.

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

(b)

TRANSPORTATION OPERATIONS

**Miscellaneous Traffic Rules
Route 71**

Adopted Amendment: N.J.A.C. 16:30-2.5

Proposed: March 7, 1983 at 15 N.J.R. 318(b).
Adopted: April 18, 1983 by David W. Gwynn, Chief
Engineer, Transportation Operations and Local Aid.
Filed: April 26, 1983 as R.1983 d.152, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-140.

Effective Date: May 16, 1983.
Expiration Date pursuant to Executive Order No. 66(1978):
August 1, 1983.

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

(c)

TRANSPORTATION OPERATIONS

**Turns
Routes 15 and 46**

**Adopted Amendment: N.J.A.C. 16:31-1.3
Adopted New Rule: N.J.A.C. 16:31-1.21**

Proposed: March 7, 1983 at 15 N.J.R. 319(a).
Adopted: April 18, 1983 by David W. Gwynn, Chief
Engineer, Transportation Operations and Local Aid.
Filed: April 26, 1983 as R.1983 d.153, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 38:4-183.6.

MISCELLANEOUS NOTICES

HEALTH

(a)

CONSUMER HEALTH SERVICES

Manufacturing, Storage, Distribution and Handling of Nonalcoholic Beverages and Bottled Water

Notice of Correction: N.J.A.C. 8:21-12.5

An error appears in the April 18, 1983 issue of the New Jersey Register at 15 N.J.R. 623(a) concerning labeling requirements specific to bottled water. N.J.A.C. 8:21-12.5(b)1 should have appeared as follows:

8:21-12.5 Labeling requirements specific to bottled water

(b) Type: The type of source water for bottled water purposes shall be clearly and prominently identified on the primary container according to the following criteria:

1. "Demineralized water"*, "distilled water" or "purified water"* means water which has been treated by deionization, distillation, reverse osmosis, or other approved processes *and contains no more than 10 ppm total dissolved solids* *[which adequately removes the mineral content of the source water]*.

(b)

PUBLIC HEALTH COUNCIL

CONSUMER HEALTH SERVICES

State Sanitary Code: Chapter XII Retail Food Establishments and Food and Beverage Vending Machines

Notice of Correction: N.J.A.C. 8:24

Errors appear in the June 7, 1982 issue of the New Jersey Register at 14 N.J.R. 518 and 14 N.J.R. 525 concerning retail food establishments and food and beverage vending machines. N.J.A.C. 8:24-5.6(b) and N.J.A.C. 8:24-11.3(b) should have appeared as follows:

8:24-5.6 Storage and handling of cleaned equipment and utensils

(b) Cleaned, and cleaned and sanitized, portable equipment and utensils shall be stored at least six inches above the floor in a clean, dry location, and suitable space and facilities shall be provided for such storage so that food contact surfaces are protected from splash, dust, and other contamination. Utensils shall be air-dried before

being stored, or shall be stored in self-draining position on suitably located hooks or racks constructed of corrosion resistant material. Wherever practicable, stored containers and utensils shall be covered or inverted; facilities for the storage of flatware (silverware) shall be provided and shall be designed and maintained to present the handle to the employee or customer.

8:24-11.3 Food protection

(b) The temperature of potentially hazardous foods shall be 45 degrees Fahrenheit (7.2 degrees C.) or below or 140 degrees Fahrenheit (60 degrees C.) or above at all times, except as otherwise provided in **this chapter**. Frozen foods shall be held at 0 degrees Fahrenheit (-17.8 degrees C.) at all times except during transfer and loading of product or during defrost cycles the foods may reach a temperature of 10 degrees Fahrenheit (-8 degrees C.).

HIGHER EDUCATION

(c)

BOARD OF HIGHER EDUCATION

Academic Personnel Policies Guide for New Jersey State Colleges

Notice of Correction: N.J.A.C. 9:2-2.25

An error appears in the December 20, 1982 issue of the New Jersey Register at 14 N.J.R. 1458(a) concerning retirement. N.J.A.C. 9:2-2.25 should have appeared as follows:

9:2-2.25 Retirement

(a) Faculty members **and administrators** shall be retired no later than June 30 of the college year during which they become 70 years of age, or earlier at their option. **Upon the recommendation of the President of the college, the Board of Trustees may grant a one year waiver of the mandatory retirement until *June 30 of the year in which the individual reaches* age 71, when such waiver is deemed in the best interest of the college.**

(b) (No change.)

INSURANCE

(a)

THE COMMISSIONER

Notice of Recertification to Legislature: N.J.A.C. 11:1-5.5 Property and Casualty Cancellation or Nonrenewal Notice

Take notice that Joseph F. Murphy, the Commissioner of Insurance, pursuant to N.J.S.A. 17:29C-3 and N.J.S.A. 39:6A-3, has recertified to the Legislature the need for the continuation of the Notice of Cancellation and Nonrenewal requirement applicable to property and casualty insurance policies for the fiscal year commencing July 1, 1983, as set forth in N.J.A.C. 11:1-5.5, which regulation continues in full force and effect.

This notice is published as a matter of public information.

ENERGY

(b)

THE COMMISSIONER

Public Hearing: RECAP Contracts

Take notice that Jersey Central Power and Light ("JCP&L") Company has filed with the New Jersey Department of Energy and the New Jersey Board of Public Utilities an application for a determination with respect to certain contracts with the National Conservation Corporation, Sentinel Energy of New Jersey and Volt Energy Systems, Inc. The contracts are part of RECAP and involve the performance of audits, and supply and installation of conservation measures for JCP&L residential customers.

The **public hearing** will be conducted by the New Jersey Department of Energy on May 19, 1983 at 10:00 A.M. at:

1100 Raymond Boulevard
2nd Floor, Hearing Room 1
Newark, NJ 07102

Persons who wish to speak at the hearing should contact the New Jersey Department of Energy at (201)648-2410 by May 18, 1983 and should bring four copies of their testimony to the hearing.

Interested persons may also submit written statements on the applications to the New Jersey Department of Energy, 101 Commerce Street, Newark, New Jersey 07102 by May 18, 1983.

Copies of the contracts are available for review at the Jersey Central Power and Light Company.

This notice is published as a matter of public information.

INDEX OF PROPOSED RULES

The *Index of Proposed Rules* contains rules which have been proposed in the New Jersey Register between May 17, 1982 and May 2, 1983, and which have not been adopted and filed by May 2, 1983. The index does not contain rules proposed in this Register and listed in the *Table of Rules in This Issue*. These proposals will appear in the next *Index of Proposed Rules*.

A proposed rule listed in this index may be adopted no later than one year from the date the proposal was originally published in the Register. Failure to timely adopt the proposed rule requires the proposing agency to re-submit 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 of the Office of Administrative Law (N.J.A.C. 1:30).

The *Index of Proposed Rules* appears in the second issue of each month, complementing the *Index of Adopted Rules* which

appears in the first Register of each month. Together, these indices make available for a subscriber to the Code and Register all legally effective rules, and enable the subscriber to keep track of all State agency rulemaking activity from the initial proposal through final promulgation.

The proposed rules are listed below in order of their Code citation. Accompanying the Code citation for each proposal is a brief description of its contents, the date of its publication in the Register, and its Register citation.

The full text of the proposed rule will generally appear in the Register. If the full text of the proposed rule was not printed in the Register, it is available for a fee from:

Administrative Filings
CN 301
Trenton, New Jersey 08625

N.J.A.C. CITATION		PROPOSAL DATE	PROPOSAL NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW--TITLE 1			
1:1-2.2	Public hearing: Contested cases and OAL jurisdiction	6-7-82	14 N.J.R. 674(a)
1:1-5.2, 5.3	Pre-hearing information	6-21-82	14 N.J.R. 607(a)
1:6A-3.3, 4.4, 4.5	Special Education Program hearing rules	3-21-83	15 N.J.R. 451(a)
1:1-10.1	Pre-hearing conferences by telephone	4-18-83	15 N.J.R. 582(a)
1:20	Representation fee hearings before PERC Appeal Board	8-16-82	14 N.J.R. 862(a)
1:30-3.8	Rulemaking: Agency status reports	11-1-82	14 N.J.R. 1185(a)
AGRICULTURE--TITLE 2			
2:23	Voluntary Gypsy Moth Suppression Program	3-21-83	15 N.J.R. 370(a)
2:68-1	Commercial feeding stuffs: Association standards	4-18-83	15 N.J.R. 583(a)
2:69-1.11	Commercial values for fertilizers and conditioners	5-2-83	15 N.J.R. 658(a)
2:71-2.28	Fruits and vegetables: Rates for inspection services	4-4-83	15 N.J.R. 462(a)
2:73-2	Readopt State Seal of Quality for eggs	4-18-83	15 N.J.R. 584(a)
2:85-1	Repeal Agricultural Preserve Demonstration Program	3-21-83	15 N.J.R. 371(a)
BANKING--TITLE 3			
3:6-9	Super NOW deposit accounts	8-2-82	14 N.J.R. 786(a)
3:6-13	Automated teller machines	2-22-83	15 N.J.R. 190(a)
3:11-1.1	Readopt approval for banks to exceed 10% limitation on investments	5-2-83	15 N.J.R. 658(b)
3:23-2.1	License fees for credit sales and loan businesses	4-4-83	15 N.J.R. 463(a)
3:26-3.1	Readopt rules on action upon detection of crime	3-21-83	15 N.J.R. 372(a)
CIVIL SERVICE--TITLE 4			
4:1-15.2	Lateral title change	9-7-82	14 N.J.R. 940(b)
4:1-16.13	Request for reemployment (local)	3-7-83	15 N.J.R. 272(b)
4:1-18.5	Inclement weather emergency policy (State)	3-7-83	15 N.J.R. 273(a)
4:1-18.9, 18.10	Flexitime and operation hours (State)	3-21-83	15 N.J.R. 373(a)
4:1-18.11	Alternative workweek programs (State)	3-21-83	15 N.J.R. 374(a)
4:1-20.9	Tuition aid program (State)	3-7-83	15 N.J.R. 274(a)
4:2-15.2	Repeal: Lateral title change	9-7-82	14 N.J.R. 940(b)
4:2-18.1	Repeal (see 4:1-18.5)	3-7-83	15 N.J.R. 273(a)
4:2-20.3	Granting of increments after denial	2-7-83	15 N.J.R. 112(a)
4:2-20.9	Repeal (see 4:1-20.9)	3-7-83	15 N.J.R. 273(a)
COMMUNITY AFFAIRS--TITLE 5			
5:22-1.4	Residential tax exemptions: Additions and improvements	4-18-83	15 N.J.R. 586(a)
5:23-3.8A	Products violating the Uniform Construction Code	4-18-83	15 N.J.R. 587(a)
5:23-5.11(d)	Uniform Construction Code: Licensing	7-19-82	14 N.J.R. 734(a)
5:27-12.2	Boarding houses: Rental assistance agreements	4-18-83	15 N.J.R. 587(b)
5:30	Readopt Local Finance Board rules (except 5:30-16)	4-4-83	15 N.J.R. 463(b)
5:30-10.1, 10.2	Local Finance Board: Municipal port authorities	8-2-82	14 N.J.R. 786(b)
5:100-1.5, 1.6, 2	Ombudsman for institutionalized elderly	4-18-83	15 N.J.R. 588(a)

N.J.A.C. CITATION		PROPOSAL DATE	PROPOSAL NOTICE (N.J.R. CITATION)
EDUCATION—TITLE 6			
6:3-1	School districts: General provisions	3-21-83	15 N.J.R. 376(a)
6:3-1.10	School districts: Standards for determining seniority	4-4-83	15 N.J.R. 464(a)
6:11-4.2, 4.3, 4.4	Temporary, provisional and emergency certificates	9-20-82	14 N.J.R. 1011(a)
6:11-10.2, 10.4, 10.7-10.9	Administrative certification	6-21-82	14 N.J.R. 614(a)
6:21-5	Standards for school buses	3-21-83	15 N.J.R. 383(a)
6:21-6, 18, 19	Repeal (see 6:21-5)	3-21-83	15 N.J.R. 383(a)
6:28-11	Programs for preschool handicapped children	4-4-83	15 N.J.R. 556(a)
6:64-2.1-2.4	County library reorganization	2-22-83	15 N.J.R. 194(a)
6:66-2.15, 2.17, 2.20, 2.21, 3.12, 3.13	Records Management: Microfilm systems and standards	4-18-83	15 N.J.R. 590(a)
6:68-4.1-4.9	Library Construction Incentive Act rules	2-22-83	15 N.J.R. 196(a)
ENVIRONMENTAL PROTECTION—TITLE 7			
7:1-8, 9	Siting of commercial hazardous waste facilities	2-7-83	15 N.J.R. 113(a)
7:1D-1	Emergency water projects: Allocation of costs	2-7-83	15 N.J.R. 117(a)
7:1G	Loan procedures: Water supply interconnections	9-20-82	14 N.J.R. 1012(a)
7:7-2.2, 2.6-2.9, 2.11, 2.15	"Repair" of waterfront structures; removal of unauthorized fill; permit duration	7-6-82	14 N.J.R. 679(b)
7:7A-1.13	Wetlands maps in Cape May County	12-6-82	14 N.J.R. 1330(a)
7:7A-1.13	Wetlands maps in Atlantic and Cumberland counties	2-7-83	15 N.J.R. 119(a)
7:7A-1.13	Wetlands in Middlesex County	3-21-83	15 N.J.R. 386(a)
7:9-2	Readopt rules on individual subsurface disposal systems	4-18-83	15 N.J.R. 591(a)
7:10	Readopt Safe Drinking Water Act rules	4-18-83	15 N.J.R. 592(a)
7:11-2	Consolidated Rate Schedule: D&R Canal and Spruce Run-Round Valley	2-7-83	15 N.J.R. 122(a)
7:11-4	Repeal Spruce Run-Round Valley rates	2-7-83	15 N.J.R. 122(a)
7:12	Readopt shellfish-growing water classification	4-18-83	15 N.J.R. 595(a)
7:13-1.11	Floodway delineations within Bass River Basin	7-6-82	14 N.J.R. 683(b)
7:13-1.11	Floodway delineations within Atlantic Basin	7-19-82	14 N.J.R. 736(a)
7:13-1.11	Floodway delineations in Mercer County	10-18-82	14 N.J.R. 1132(a)
7:13-1.11	Floodway delineations in Mullica River Basin	10-18-82	14 N.J.R. 1133(a)
7:13-1.11	Floodway delineations in Monmouth County	10-18-82	14 N.J.R. 1134(a)
7:13-1.11	Floodway delineations in Ocean-Monmouth Counties	11-1-82	14 N.J.R. 1189(a)
7:13-1.11	Floodway delineations in Monmouth County	2-22-83	15 N.J.R. 198(a)
7:13-1.11	Floodways along the Raritan River	5-2-83	15 N.J.R. 659(a)
7:14-2.13, 2.14, 2.15	Construction of wastewater treatment facilities	10-18-82	14 N.J.R. 1135(a)
7:14A	Readopt NJPDES permit program rules	4-18-83	15 N.J.R. 606(a)
7:19-4	Diversion assessment and payment for public water supply	3-7-83	15 N.J.R. 276(a)
7:20A	Water diversion for growing use	11-15-82	14 N.J.R. 1249(a)
7:20A	New comment period: Water diversion for growing use	11-15-82	15 N.J.R. 73(a)
7:25-2.14	Field trials and horseback riding permits	3-21-83	15 N.J.R. 387(a)
7:25-7.13	Crab dredging off Atlantic coast	3-21-83	15 N.J.R. 388(a)
7:25-9.1	Taking of hard clams: Size tolerance control	7-6-82	14 N.J.R. 689(a)
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7:26-1.4, 2.6, 2.11, 2.13, 3.5	Solid waste management	5-2-83	15 N.J.R. 660(a)
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7:26-4	Readopt solid waste fee schedules	5-2-83	15 N.J.R. 662(a)
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7:36-5.2	Green acres additional funding	12-20-82	14 N.J.R. 1436(a)
7:38-1	Wild and Scenic Rivers System	11-15-82	14 N.J.R. 1256(a)
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8:23-1.4	Psittacosis testing of quarantined birds	4-4-83	15 N.J.R. 466(a)
8:25	Readopt Youth Camp Safety rules	4-4-83	15 N.J.R. 467(a)
8:30	Repeal (see 8:39)	3-7-83	15 N.J.R. 279(a)
8:31-26.1	Health care facilities: Ownership by convicted persons	3-7-83	15 N.J.R. 307(a)

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8:31B-3.26, 3.27, 3.72, 3.73	Hospital rate setting: Procedure and methodology	2-22-83	15 N.J.R. 201(a)
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8:33H-3.3	Long-term care: Expansion and new construction	4-4-83	15 N.J.R. 473(a)
8:37	Repeal (see 8:39)	3-7-83	15 N.J.R. 279(a)
8:39	Licensure of long-term care facilities	3-7-83	15 N.J.R. 279(a)
8:40	Repeal interim rules for abortion facilities	3-7-83	15 N.J.R. 308(a)
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8:43B-8.3	Early detection of biochemical disorders in newborn infants	3-7-83	15 N.J.R. 311(a)
8:43F-3.3	Health care facilities: Ownership by convicted persons	3-7-83	15 N.J.R. 307(a)
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8:65-7.5	Prescriptions for controlled substances: Time limits	2-7-83	15 N.J.R. 125(a)
8:65-10.5	Remove Loperamide from Controlled Substances	2-7-83	15 N.J.R. 126(a)
8:71	Additions to generic drug list (see 14 N.J.R. 1160(b), 1392(a); 15 N.J.R. 91(a))	7-6-82	14 N.J.R. 690(a)
8:71	Generic drug list additions (see 15 N.J.R. 90(a), 147(e), 690(c))	8-16-82	14 N.J.R. 888(a)
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8:71	Oxycodones; Schedule II policy	10-4-82	14 N.J.R. 1077(a)
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8:71	Generic drug list changes	2-7-83	15 N.J.R. 126(b)
8:71	Generic drug list additions (see 15 N.J.R. 691(b))	2-7-83	15 N.J.R. 127(a)
8:71	Generic drug list additions	3-21-83	15 N.J.R. 420(a)
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10:89-3.1	Home Energy Assistance: Automatic payments	9-7-82	14 N.J.R. 957(a)
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16:28A-1.70	Parking on Route 439 in Elizabeth	4-4-83	15 N.J.R. 521(b)
16:30-3.7	Bus lane on US22 in Westfield-Mountainside	4-4-83	15 N.J.R. 522(a)
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17:1-12.4	Interfund transfers: Court attendants appointed sheriff's officers	4-4-83	15 N.J.R. 525(a)
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17:10	Readopt Judicial Retirement System rules	4-4-83	15 N.J.R. 530(a)
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19:53	Readopt equal employment opportunity rules	3-21-83	15 N.J.R. 433(a)

The following rules were proposed in the New Jersey Register, but have not been timely adopted and therefore have expired pursuant to N.J.A.C. 1:30-4.2(c).

8:71	Generic drug list (see 14 N.J.R. 836(a), 1160(a))	4-19-82	14 N.J.R. 369(a)
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